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CURRENT TOPICS

The County Courts: Extended Jurisdiction and Legal Aid

"IN order to relieve pressure of business in my courts of law measures will be laid before you to increase the jurisdiction of the county courts in England and Wales and to set up new criminal courts at Liverpool and Manchester." In these cautious and unsensational words the Queen's Speech announced, on 30th November, the imminence of two urgent and long overdue, if radical, reforms. Soon enough we shall hear details of the extent of the reforms. As regards the county courts the extension should at least correspond with the extent of the fall in the value of money since 1939. Legal aid in the county courts was not mentioned in the speech, but it is an essential corollary of the proposed extension of jurisdiction, and in fact the ATTORNEY-GENERAL announced in reply to questions in the Commons on 6th December that the Government propose to make legal aid available for all types of county court proceedings covered by the Legal Aid and Advice Act. This long-advocated reform will be widely welcomed, even if it is tempered by disappointment that the legal advice scheme is no nearer implementation.

The Town and Country Planning Act, 1954

THE fixing of 1st January, 1955, as the appointed day for the coming into force of *all* the provisions of the Town and Country Planning Act, 1954, will be noted with relief by those who had observed with misgiving the all-too familiar formula in s. 72 (2) of the Act which ends with the words " . . . and different days may be appointed for different purposes of this Act." However, simplicity has prevailed and the Town and Country Planning Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598 (C.17)), has given us a single easily remembered date. The conveyancing implications are discussed elsewhere in this issue in the first of a short series of articles on the new Act, and a later article will discuss the steps to be taken on behalf of persons already entitled to cash payments under the Act: solicitors acting for such persons will find the procedure for making applications for these payments prescribed in the Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599), and it is sufficient to note here that applications will have to be made before 30th April, 1955, on a form obtainable from the Board. The procedure for making *future* claims under Pts. II and V of the Act has also been prescribed by the Town and Country Planning (Compensation) Regulations, 1954 (S.I. 1954 No. 1600), which contain in a schedule the prescribed form of claim.

The Rule of Law

The Times of 6th December contained news of an important proposal on the part of a private body of lawyers to deal with the oft-lamented situation under which the decisions and acts of administrative tribunals prove so often incapable of challenge in the courts. At a dinner of the Kennington Law Club it was revealed that recommendations would shortly be published for the setting up of a new Administrative Division of the High Court having an appellate jurisdiction on points of law over such tribunals, and that they

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would propose that it should be manned by a High Court judge sitting with two retired civil servants as assessors. As recently as a month ago MORRIS and PARKER, L.JJ., giving judgment in *Healey* v. *Minister of Health* [1954] 3 W.L.R. 815; *ante*, p. 819, reaffirmed that the courts do not at present claim any such appellate jurisdiction unless it is conferred by statute. There are certain remedies open in a case where an inferior tribunal has stated reasons for its action or decision and these reasons are demonstrably inadequate. But not often is it obligatory for the tribunal to give reasons. The new proposals would apparently require subordinate bodies to make public their reasons. In this year's Hamlyn Lectures (which have just been published by Stevens & Sons, Ltd., at 12s. 6d.) Professor C. J. HAMSON tells how shocked was a prominent French lawyer and senior Commissaire at the Conseil d'État at this refusal of the English courts to go behind orders which are not "speaking orders." The lectures, entitled "Executive Discretion and Judicial Control," give an account of the procedure of the Conseil d'État and of the principles by which it controls administrative acts in France which, in its turn, will shock the English reader brought up to believe that the common-law system has a monopoly of the "Rule of Law." Professor Hamson's study provides a valuable comparative background for judging the effect and the urgency of the new proposals.

Cruelty and Divorce

THE view that the more frequent grounding of divorce petitions on cruelty charges has had bad results is growing. On 29th November Lord Justice HODSON, formerly a divorce judge of great experience, said in the first of a series of lectures at Holy Trinity Church, Hampstead, that he regretted the consequences which had followed from the introduction of cruelty as a ground for divorce. He said: "The difficulties which arrive in married life are there to be overcome and it must, I think, tend to undermine the discipline which the partners must impose on themselves and their loyalty to one another if they know that if things go wrong they can, at any rate, consider bringing an action against one or the other on the grounds of cruelty." It is possible to regret these results without wishing to alter the law as it has stood since the Act of 1937. If the court considers that the difficulties created by the behaviour of one of the parties to a marriage can be overcome without serious danger to the health of one of them, it can and should refuse to grant a decree. If there is danger to health, it would be wrong if the courts could not recognise that the foundation of the marriage had been shattered, in circumstances where a spouse would be justified in ending cohabitation (*Russell* v. *Russell* [1897] A.C. 395).

Marine Insurance

"TABLES OF PRACTICAL EQUIVALENTS," published recently by the International Union of Marine Insurance in co-operation with the International Chamber of Commerce (81 pp., 8s.) is a valuable work of reference bringing out the similarities and differences existing between the principal insurance terms, clauses and covers in thirteen countries for the insurance of cargo against transport risks. The authors have selected corresponding terms which could be considered to be equivalent for commercial purposes; no claim is made to authority as regards their legal implications. The countries covered are Great Britain, United States, France, Belgium, Holland, Germany, Denmark, Norway, Sweden, Finland, Switzerland, Italy and Spain. The tables are arranged for synoptic comparison between the thirteen countries and deal with marine risks (including basic covers, "all risks" clauses, special risks, risks of jettison and washing overboard and general clauses), war risk, strike, riot and civil commotion risks and terms of franchise. There is an appendix of conditions of standard policy forms and wording of clauses referred to in the tables in the language of each country with English translation.

Solicitors in Local Government

MR. J. D. SCHOOLING, Honorary Secretary of the Local Government Legal Society, writing in *The Times* of 4th December, stated that the National Association of Local Government Officers speaks for professional officers as well as other officers employed by local authorities, and assistant solicitors in local government service are grateful for what it has done and is doing. He continued: "But given the choice, almost all these solicitors would prefer to be represented by The Law Society in direct negotiation with representatives of local authorities rather than indirectly by an immense association whose membership is overwhelmingly non-professional. Yet this choice is not there, because the difficulty of contracting out into something fresh has so far proved insuperable. The learned and professional institutions are only now beginning to realise that their active participation in negotiating machinery is vital to their own interests and they are not finding it easy to make up for a slow start. Is it too much to hope that they will soon catch up the British Medical Association, who have a clear lead?"

Mr. V. R. Idelson, Q.C.

THE extraordinary career of the late Mr. VLADIMIR ROBERT IDELSON, Q.C., who died on 29th November at the age of 73, began in the Taganrog Classical Gymnasium in the University of Kharkov, where he took a first class honours degree in law. Later, at Berlin University, he was made a doctor of philosophy and from 1906 until 1917 he practised at the Russian Bar. In 1917 he was appointed to a post in the Russian Treasury. Coming to England after the Revolution, he practised as an expert on Russian and international law, and in 1926 he was called to the Bar by Gray's Inn. In 1943 he took silk and in 1947 he became a Bencher of Lincoln's Inn. He was a member of the Law Advisory Committee of the British Council, as well as of the executive councils of the Grotius Society and the Society of Comparative Legislation. In some ways the transition from a continental to an English practice was more remarkable even than that of the famous Mr. Benjamin, Q.C., after the American Civil War. His career affords yet another example of how a country can lose by revolution and gain by liberty and stability.

The Kennington College of Commerce and Law

WE have been favoured with a copy of the current number (vol. 4, No. 1) of the Kennington Law Club's magazine, *Out of Court*. It is one of the brightest publications for law students that we have seen, as a record both of the manifold activities of the club, including an outing to Oxford and a projected trip to Paris as well as a dinner-dance and a moot, and of its achievements, which include successes in the Bar and Law Society's examinations and in the LL.B. examinations. In addition the magazine contains admirable articles by Mr. S. N. GRANT-BAILEY, Dean of the Faculty of Law of the University of Southampton, Mr. G. A. BONNER, Dr. L. NEVILLE BROWN, and others. Although the Kennington College of Commerce and Law, to give it its full title, operates in the evenings, it gives a wide legal education, and has a tutorial system, a reference library, and a law club which conducts moots and social activities and produces the magazine.

THE TOWN AND COUNTRY PLANNING ACT, 1954—I

THE Town and Country Planning Bill received the Royal Assent on the 25th November and became the Town and Country Planning Act, 1954. The Bill as it was originally introduced was discussed in a series of articles at pp. 187, 205, 223, 241 and 260, *ante*, while the more important of the amendments made to it in the House of Commons were described at p. 626, *ante*. Since then a very large number of amendments, the majority of them of a drafting nature only, have been made by the House of Lords. The object of this article is threefold: (1) to show the practical effect of the Act on conveyancing; (2) to indicate the lines on which action will have to be taken in the near future on behalf of those who may already be entitled to cash payments under the Act, and (3) to set out the more important of the amendments made to the Bill in the House of Lords so far as these are not covered by (1) and (2). There are, however, two or three preliminary points to be made.

First, the Act is one of those which does not come into force until an appointed day, and different days may be appointed for different sections of the Act. By the Town and Country Planning Act, 1954 (Appointed Day) Order, 1954 (S.I. 1954 No. 1598 (C. 17)), the 1st January, 1955, has been appointed as the day on which the Act shall come into operation for all purposes.

Secondly, the majority of conveyancing transactions will not be affected by the Act at all. Its provisions are entirely financial and relate primarily to the development value of land. Therefore, where the land is already fully developed, as in the case of, e.g., the ordinary private house and garden, there is no need to worry about the Act at all. It is only where the client is paying or lending more than the value of the land in its existing state for its existing use that the Act may have some effect.

Thirdly, where the Act does have some effect no purchaser or mortgagee will be worse off than he was before the Act, but in many cases he will be better off. In order, however, that he may be better off it is up to his solicitor to secure for him the advantages which the Act offers.

(1) CONVEYANCING

A. *The Part VI Claim*

Hitherto in settling a draft contract for the sale of land, one has had to consider whether there is a claim under Pt. VI of the 1947 Act on the old £300m. fund and, if so and it is held by the vendor, whether the vendor is to retain it or whether it is to be assigned to the purchaser. Both The Law Society's Conditions of Sale and the National Conditions of Sale contain appropriate provisions.

When the new Act comes into operation the agreed amounts of these claims, or what is left of them, after the deductions provided for under Pts. I and V of the Act have been made, automatically become attached to the land and thereafter run with it (ss. 17 and 60 of the 1954 Act). The amount of any claim which so attaches to the land ceases to be a Pt. VI claim and is described as the "original unexpended balance of established development value." It will, therefore, be pointless and inappropriate to make any provision in the contract about the retention or assignment of the claim or the unexpended balance.

Further, where a vendor is selling only part of the land which comprised the area of the Pt. VI claim and, therefore, part of the land to which the original unexpended balance attached, it will be pointless and inappropriate for the contract to apportion the balance as between the land being sold and that retained. The Act contains intricate provisions for apportionment which apply automatically, and no agreement between vendor and purchaser will be effective; a vendor cannot seek to apportion the lion's share of the balance to the land which he is retaining.

It is for the Central Land Board, or on appeal the Lands Tribunal, to determine the apportionment as and when occasion arises. The principle upon which the apportionment is to be made is that the Board should attribute to the piece of land concerned so much of the amount of the original £300m. fund claim as they might reasonably have been expected to attribute to it if the claim had related to that piece of land only (s. 17 (2) (*b*) and s. 2 (4) of the 1954 Act). If a formal apportionment is required so that a purchaser may know what balance is attached to his land, application may be made to the Board under s. 48 of the Act, to be mentioned later, but unless there is any likelihood of a refusal of planning permission or of compulsory acquisition this should hardly be necessary.

B. *Protection of the Prospective Purchaser or Mortgagee*

The prospective purchaser or mortgagee must be protected in two ways, namely:—

(*a*) By being safeguarded against financial loss in respect of any development value included in his purchase price or loan if development of the land should be stopped or made expensive by planning restrictions or the land should be compulsorily acquired from him before he has developed it.

(*b*) By being safeguarded against having to repay before he can develop any compensation previously paid for planning restrictions under the 1954 Act, or paid under s. 59 of the 1947 Act, under which special payments were authorised in respect of certain war-damaged land.

(A) *Safeguards against financial loss*

The possibility of financial loss arises, first, from the fact that the payment of compensation if development is prevented by the refusal of planning permission or is made expensive by conditions imposed on such a permission, e.g., requiring a service road to be constructed, is dependent on the existence in respect of the land concerned of an unexpended balance of established development value, and the amount of that balance sets the upper limit of that compensation. The possibility of loss arises, secondly, from the fact that the 1954 Act retains the principle of s. 51 (4) of the 1947 Act, that the compensation payable on the compulsory acquisition of land, except in a few special cases, e.g., ripe land under s. 80 of the 1947 Act, shall be the existing use value of that land; the 1954 Act does, however, add to the existing use compensation the amount of any unexpended balance, so that here again the balance is most important. If there is no balance, a client who pays £300 for a building plot will have a practically useless piece of land if he is refused permission to build and will have no claim for compensation; likewise, if the land is compulsorily acquired he will only receive the existing use value of the land, say, £15. The 1954 Act does contain a section, introduced at a late stage in consequence of the tragic death of Mr. Pilgrim, of Romford, which deals with cases of hardship on compulsory acquisition (it does not apply in the case of planning restrictions). This section will be discussed later, but the purchaser's solicitor ought not to take it into consideration as a safeguard to his client.

How then is the client to be safeguarded against financial loss?

Protection is obtainable under five heads, namely:—

(*a*) The existence of an unexpended balance of established development value of satisfactory amount.

(*b*) The existence of a valid planning permission for the development concerned (including an interim development permission granted after 21st July, 1943), and for this purpose an outline permission will suffice.

(*c*) The taking advantage of the provisions of s. 33 of the 1954 Act.

(*d*) The existence of a valid planning permission and of a ripe land certificate under s. 80 of the 1947 Act in respect of the land and covering the development.

(*e*) The land falling within one of the special classes set out in Sched. VI to the 1954 Act, e.g., certain local authority land or operational land of a charity or statutory undertakers, and the existence of a planning permission for the development concerned.

To some extent these heads overlap, but the degree of protection they afford is not uniform. Thus:—

(*a*) If the amount of the balance is sufficient to cover the development value being paid by the client, it will be a satisfactory safeguard against planning restrictions or compulsory acquisition; if it is not, protection should be secured under one of the other heads.

(*b*) This will afford protection in respect of planning restrictions but not compulsory acquisition; if planning restrictions are to be imposed, the planning permission will have to be revoked or modified, in which case there is no artificial ceiling on the development value which can be claimed as compensation (1954 Act, s. 38 (1)); if the permission itself contains conditions involving expenditure, e.g., the construction of a service road, compensation for this expenditure cannot be claimed unless there is an unexpended balance (if the permission is dated before the commencement of the 1954 Act the purchaser will not, in any event, himself be able to obtain compensation for this expenditure).

(*c*), (*d*) and (*e*) In each of these three cases it is a necessary incident of the protection that a planning permission should be in existence for the development; in each case protection will be afforded against planning restrictions on the lines of (*b*) above, because of the existence of the permission, and in each case protection will be afforded in respect of compulsory acquisition to the extent of the *current* development value of the development specified in the relevant planning permission, the compensation not being tied to 1947 values (1954 Act, s. 34).

How can the reader find the amount of the all-important balance and what are the provisions of s. 33 of the 1954 Act referred to above?

Unfortunately, the calculation of the balance is an intricate and difficult task. Broadly, the formula is to take the agreed amount of the Pt. VI claim and deduct from it the amount of—

(i) any unpaid development charge for which the claim was pledged to the Central Land Board (s. 2 (2));

(ii) any payment under s. 59 of the 1947 Act (s. 2 (2));

(iii) any payment under Pt. I of the 1954 Act, whether or not actually paid (any payment under case D, whatever its amount, will extinguish the balance completely) (s. 15); and

(iv) any payment under Pt. V of the 1954 Act, whether or not actually paid (s. 46).

Eight-sevenths of the result is the original unexpended balance immediately after the commencement of the Act. The additional seventh is in lieu of the interest which has been accruing on Pt. VI claims since 1st July, 1948. If there is more than one Pt. VI claim relating to the land, e.g., one for the freehold and one for the leasehold interest, the results for both must be added together to give the balance. In order, however, to find the unexpended balance at any given time after the commencement of the Act it will be necessary to deduct from the original balance—

(i) the value at that given time of any development (not being development of the limited character set out in Sched. III to the 1947 Act) initiated on the land since 1st July, 1948, unless a development charge was paid for it or it was exempt from charge under Pt. VIII of the 1947 Act or the Development Charge Exemptions Regulations (s. 18 (4)), and

(ii) any payments of compensation for planning restrictions under Pt. II of the 1947 Act (s. 18 (3)).

Section 48 of the Act enables a prospective purchaser or other person to obtain for a fee of five shillings from the Central Land Board a certificate specifying (subject to any outstanding claims under Pt. I or Pt. V of the 1954 Act) the amount, if any, of the unexpended balance attached to a particular piece of land and the state of the land on 1st July, 1948. This will leave the purchaser's solicitor to obtain from the vendor's solicitor details of any outstanding Pt. I or Pt. V claims, to decide whether any deduction must be made under (i) for development since 1st July, 1948, and to deduct any compensation payments under (ii), which may be ascertained from the vendor's solicitor or, if over £20, from the appropriate local land charges register.

However, as mentioned at p. 627, *ante*, this section will, in practice, be of no use to a prospective purchaser, or other person not entitled to an interest in the land, in cases where an apportionment is involved, though in these cases it may be a convenient method (on payment of a further fee of fifteen shillings) of obtaining at leisure a formal apportionment of a balance. In these cases, therefore, the prospective purchaser will have to rely on the vendor for all the necessary information.

The provisions of s. 33 of the 1954 Act are those contained originally in cl. 37 (subsequently cl. 34) of the Bill and mentioned at pp. 187 and 627, *ante*. Considerable improvements in the clause were made by amendments in the House of Lords. The clause as discussed at p. 627, *ante*, enabled a prospective purchaser to apply in writing to the local county borough or county district council to give him notice within twenty-eight days saying whether they or any other public authority proposed to acquire the land. If the notice was in the negative, the purchase was completed within three months and the council or any other authority acquired the land compulsorily in pursuance of a compulsory purchase order made before the end of the period of five years beginning with the date of the service of the notice, the council or other authority would, the clause provided, have to pay, as well as the existing use value of the land, the development value of the land in respect of any proposed development for which planning permission existed at the date of the notice irrespective of 1947 values or the existence of an unexpended balance.

The main improvements which now appear in the section (*a*) enable protection to be obtained at the contract stage irrespective of the date of completion, for either exchange of contracts or completion within the three-month period referred to above will suffice; and (*b*) provide that, if the

council fail to give the required notice within twenty-eight days, they shall be deemed to have given notice in the negative. Provision is also made entitling the authority to demand a fee of five shillings from the applicant.

It is important to remember that notice of exchange of contracts or completion, as the case may be, must be given by the applicant to the council within the three-month period.

(B) *Safeguarding against repayment of compensation*

Safeguarding a client against repayment of compensation is, fortunately, a much simpler task. There is a liability to repay any compensation paid under the 1954 Act which is registered in the local land charges register of the county borough or county district concerned before development is carried out. First, therefore, search should be made in this register. Secondly, as the compensation is not registrable until determined, enquiry should be made of the vendor as to whether there is any outstanding claim for compensation yet to be settled, in case some compensation should be registered after the client's purchase but before he develops. In the case of compensation paid under s. 59 of the 1947 Act the search itself will be sufficient safeguard. As the Bill was originally drawn, the Central Land Board were to be allowed up to one year to complete registration in the local land charges register of any payments under s. 59 of the 1947 Act, thus leaving a purchaser's solicitor to ascertain as best he could from the vendor during this period whether there was any such liability (see p. 261, *ante*). This provision has now been dropped, so that the local search will give complete protection.

If compensation under Pt. II of the 1954 Act is found on the register the purchaser's solicitor must consider—

(i) whether his client's proposed development is of such a character (see s. 29 (1) and (2)) that there will be a liability to repayment, or

(ii) whether he should apply to the Minister for a certificate under s. 29 (2) proviso (i), that it is not reasonable that the compensation should be recoverable, or

(iii) whether the Minister should be asked to exercise his power of remission under s. 29 (4).

The provisions of s. 29 appeared in cl. 30 (originally cl. 33) of the Bill and are discussed at p. 628, *ante*.

The second and third objects of the article mentioned in the first paragraph will be discussed in the next part of the article.

R. N. D. H.

SPEEDIER TRIAL—SOME NEW SUGGESTIONS

IT is pretty certain that what Fleet Street thinks to-day the general public, or a large section of it, will think by about half-past-nine a.m. at the latest. This alone would be sufficient reason for bringing to our readers' attention a series of recommendations for procedural reform in the law which have just been published under the uncomfortable title of "The Daily Mirror Spotlight on Justice." Besides, it is refreshing to find an interest taken outside legal circles in the actual means whereby the administration of justice might be improved, as distinct from the usual cry for abstract "justice" based too often on a single hard case within the agitator's own ken. The recommendations in the present pamphlet are, we are told, the conclusions of a panel of experts, and whilst it would have been of the greatest interest to know the names and the standing of the individuals whose collective views the newspaper here publicly espouses, there can be no doubt from the terms of the booklet that they are people with access to a good many statistics. Their case is compiled and edited by Mr. Paul Cave in English of the crisp but correct variety.

Three topics are investigated and pronounced upon by the panel—The Congestion of the High Court, Legal Aid, and Magistrates' Courts. On all three proposals are made which will interest solicitors, but with regard to magistrates' courts they deal largely with the constitution of the bench. About half the pamphlet is devoted to the selection and the proceedings of those who, to the average man and woman, "*are* the law." Lawyers will readily accept the desirability of counteracting, so far as possible, any tendency by the police to dominate magistrates' courts, though whether there is a sufficient case for appointing procurators fiscal as in Scotland is arguable. We like the suggestion that a member of the staff of the magistrates' clerk's office should be deputed to give advance procedural information to defendants in person, while not envying that harassed clerk his task. The complaint about disparity in sentences develops into a plea for severer penalties for motoring offences.

Legal aid, it is recommended, should be extended to cover a legal advice service, personal injuries and Rent Act cases in the county courts, and matrimonial matters before magistrates. Here the most interesting proposal is that assistance in a divorce suit should not be granted before the possibility of reconciliation has been explored.

Particular attention is due to the panel's solution to the problem of congestion in the High Court, for although but seven pages of the book are devoted to this subject, the relevance and relationship of those pages to the reports of the Evershed Committee give them a special topicality in the columns of this journal. First, as to causes. Some past and present judges have been known to blame parties, and more pointedly, their solicitors, for delays in the lists. Every one of us has at some time made a private resolve to take care never himself to deserve that censure. The *Daily Mirror's* panel cites other reasons—the increased number of cases induced by post-war legal reforms and the coming of assisted litigation, and the inadequacy of assize arrangements. Owing to the press of criminal business, it is said, it is possible in some towns for a whole assize to pass without a single civil case being heard. We are warned in the short introduction that the usual remedy suggested in Parliament and in legal circles for the injustice which this state of affairs obviously entails is not necessarily to be the one which will catch the votes of the panel.

And indeed it is not, for the panel's proposal is not the enlargement of the High Court Bench, but a redistribution of civil work so as to throw much more of it on to the county courts. It is said that the sixty-three county court judges have not, most of them, sufficient work to keep them busy for five full days a week. We do not know whether or not account has been taken in this assertion of the valuable service many county court judges perform as chairmen and deputy chairmen of petty and quarter sessions. We should not like that useful link between civil and criminal justice to be severed. No doubt, however, the repeal of the Workmen's Compensation Acts has adjusted the weight of their burden to some extent, and we think the panel is right in saying, too, that judgment summonses and many other short applications could be dealt with by a suitably compensated and enlarged complement of registrars.

The *Daily Mirror* panel would occupy the surplus time of the county court judges by transferring to the county court the exclusive jurisdiction in all claims for damages for personal injury, subject to a right to apply to a master for a High Court hearing on the ground that the case raises difficult questions of law. It singles out for immediate treatment in this way " all claims where the accident occurred at work." When one remembers the judge's former rôle as arbitrator under the Workmen's Compensation Acts, this is not perhaps such a random cross-section of common-law litigation as it at first seems. The recommendation is that there should be no financial limit on this extended jurisdiction, or alternatively that it should be at least £2,000.

Incidental matters arising out of the proposal are not neglected. The corresponding extension of legal aid has already been mentioned. There would also be an increase in the salaries of judges and registrars and in solicitors' costs.

Most solicitors will agree that the problem of lengthening lists, fading memories of witnesses and uncertainty of trial dates is one which requires attention, and that the recommendations of the Evershed Committee afford at best a long-term solution to it. The panel's proposal is one which would carry some advantages. The county court is in most cases geographically more accessible than the High Court, days are fixed, there is a choice of representation—solicitor or counsel—and a saving of expense. Yet we should be surprised to find anything like unanimity on the question whether the county court is a suitable tribunal to decide *all* personal injuries actions. Having pointed out the advantages of the county court, and that practically any case can, under existing law, be tried there if both parties agree, the panel blames neglect of this facility on a kind of legal snobbishness and says, a little unfairly we think, " surely experienced solicitors should be capable of securing the agreement of their clients for the case to be dealt with in the county court ? " The trouble is that it takes two parties to make an agreement, and the very fact that one party is content with a county court trial may mean that the other is disposed to insist on a High Court judge and jury. (Elsewhere in the pamphlet some nice things are said about lawyers.)

It is to be remembered that the Evershed Committee observed that in personal injuries actions very little costs are incurred in interlocutory proceedings. This certainly suggests that the county court plan under which the original summons names a fixed day of trial would not be inappropriate to this class of case. On the other hand, there is more to a trial than just turning up in court with one's witnesses. While the imminence of a hearing might (or might not) render less effective the unwholesome bargaining tactic which delays any realistic offer until the eleventh hour, in the hope of harrying a nerve-ridden plaintiff into accepting something much more nominal, we shudder at the nightmare contemplation of a solicitor and his staff preparing a really big factory accident case for trial within the interval of a month or thereabouts, which is normally all that elapses between summons and hearing in the county court. In practice, the time would be shorter still for the defendant's advisers, and even the plaintiff's representatives cannot effectively prepare to meet the issues until a written defence is received. It is upon practical difficulties of this sort that the panel's well-intentioned project might very well founder.

One matter which appears to have escaped the panel's notice concerns appeals. " There should," it is stated, " as at present, be a right of appeal from the decision of the county court judge direct to the Court of Appeal." But such right of appeal now lies only on a point of law or equity —not fact, or damages. Appeals on fact may or may not be a good thing, but if, on the proposed transfer of jurisdiction, the established rights of the parties to substantial industrial accident cases were not to be cut down by a sidewind, the right of appeal would have to be brought into line with that in High Court actions, not left " as at present." J. F. J.

CHARITABLE THOUGHTS

Once again—in the earnest hope that our readers will bear with us and that familiarity has not yet bred contempt—we are making our annual appeal for the support of charities in this season of fellowship and goodwill ; and with a few words recall the continued importance of such institutions. For this appeal we make no excuses ; nor for the fact that it was made last year and will be made next year and the following year too. Too many of the most useful charities remain in comparative oblivion, and it is always a very proud honour to be able to champion their cause.

The importance of the function played by charities has not decreased in the past years ; on the contrary, with the growth of tolerance and enlightenment we become increasingly aware of the needs of the unfortunate of this world and of our duty towards them. The Welfare State is making an invaluable contribution in its social services but, nevertheless, it cannot undertake or dispense with the more personal approach of the many organisations which are entirely dependent on voluntary contributions. There is always room for improvement and there are always deserving people to whom help cannot be extended due to lack of funds.

It is impossible in an article such as this to enumerate individually all the organisations on behalf of which we should like to make an appeal, but by discussing their work in general, under the various groups into which they fall, we trust that we will attract attention and sympathy to the important aims and principles which underlie their existence. There is no need to emphasise the poverty or incapacity of the unfortunate beings whom it is necessary for such organisations to assist. This is well known to all of us. " What can a sick man say, but that he is sick ? " once said Dr. Johnson. The malady is known to us—but let us appreciate a little more fully the difficulties of the people who endeavour to combat and cure it.

We should like to draw the notice of the solicitor to the list on pp. 842–3 of institutions whose aims, work and achievement render them worthy of help and which are not State-aided, for he in his professional as well as personal capacity must frequently have the opportunity, and thus the responsibility, of advising people who wish to make donations. Although all these organisations deserve the highest praise, it is clear that everyone has his personal preference or interest when deciding which to patronise ; the choice, however, is so wide as to make possible in every case a practical expression of such interest.

Perhaps one of the greatest problems of to-day is the welfare of the increasing number of old people. The fact that many of them are suffering great hardship has been brought home to us during the present agitation for an increase in the old-age pension. This pension is so pitifully small that, even were it increased, having regard to the high cost of living it is quite inadequate to cater for the needs of those old people

who are entirely dependent on it and have neither means of their own nor relatives to look after them. There are organisations which exist to alleviate, in some measure at any rate, the difficulties and anxieties of these people during their few remaining years, and to provide rest places for those who are sick and needy.

The aftermath of two world wars followed by the Korean campaign inevitably resulted in the necessity for securing adequate provision for the dependants of those who died and the rehabilitation of those who suffered injury. Much good work is being done in caring for the ex-servicemen and women who were totally disabled and in teaching others a trade which will enable them to fulfil a useful function in society despite their handicap.

A new lease of life is frequently given to those crippled and disabled persons who are fortunate enough to come within the care of one of the charities devoted to their welfare. They are cared for and are trained to perform such work as is possible in their condition. To be given an interest to occupy the time which would otherwise drag is beneficial to their health, both bodily and mental.

We cannot help but pity those among us who have the misfortune to be blind, deaf or dumb. Inevitably they must miss some of the richness of life granted to us by the possession of all the faculties. But the blind can be taught to read in Braille, the deaf to lip-read and the dumb to speak by signs. It is up to us, however, to see that the organisations which carry out this noble work are given full opportunity to do so. They provide homes for the aged and infirm deaf and dumb and financial assistance for those in need; they promote the welfare, training and employment in workshops of the blind, schools for blind children, homes and hostels, a library for the blind and the training and distribution of those faithful companions and guardians of the blind—guide dogs.

There are still some specialised hospitals and clinics which are entirely dependent on voluntary contributions: for example, homes for incurables. The work they are doing is just as important as the work of State-aided hospitals, but unless help is given they will be unable to continue in existence.

A great number of organisations are concerned, in one manner or another, with the welfare of children. We must never forget that the safety and prosperity of our country depend on the children of to-day. The importance of caring for children deprived of normal home life due to no fault of their own cannot be over-emphasised. It is during childhood and adolescence that character is moulded, and a child's greatest need during that period is for security and affection. Funds are urgently required by the homes and missions which concern themselves with the well-being and education of physically handicapped children, orphans, ill-treated children, those whose parents either cannot or will not look after them and those who have been placed on probation after the commission of some offence, as well as by those institutions existing for the provision of rest and change needed by children whose parents cannot afford it.

Another major problem is the unnecessary loss of life which results from ignorance of the causes of certain illnesses, far though modern knowledge of medicine has progressed. Vast sums of money are being spent and are desperately needed for further research into the causes of, and treatment for, such illnesses as tuberculosis, cancer and poliomyelitis which strike their often fatal blows at young and old. Altogether too much has been spent of late on the destruction of mankind—let us see to it that more is spent on the preservation of life.

For animal lovers who wish to make donations there are charities devoted to the care of all types of creatures; they ensure that animals are not ill-treated and are looked after when old or sick.

We must not forget those organisations which carry on social services, such as visiting the poor, providing holidays for the needy (both children and adults) and spreading moral and religious teaching, all by means of voluntary contributions. In many cases they bring comfort and light into otherwise dreary lives.

Such organisations can only continue this immeasurably valuable work if they are generously assisted by the public. All of them still depend on voluntary donations—the benevolent hand of the Welfare State has not yet reached out to them. The function they perform is as essential as ever. Their field is far wider than that of the social services and their approach more flexible. They prefer to do good work first, and to look at the book of rules afterwards. They fill in the gaps in the social services—those exceptional cases when for some technicality or another an unfortunate fellow-creature is refused the benefits or assistance to which most people in his condition are entitled. Yet the performance of this function is seriously hampered—sometimes completely frustrated—by a lack of funds. It is for this reason that we appeal to everyone to assist these societies, homes and organisations, whether he is solicitor or client, clerk or typist, lawyer or otherwise.

For the existence of a healthy society it is essential that no section of that society should be neglected. By ensuring that there are ample facilities for the care of those who can no longer care for themselves, and by training the others to whom it is possible to teach some useful function in life, we are ensuring that our society will be healthy. By helping them retain some measure of independence we are benefiting both them and the community as a whole. Let us remember now the words of Lord Chesterfield: "We give them, and they give us treasures in heaven."

A Conveyancer's Diary

"AGED, IMPOTENT AND POOR PERSONS"

In *Re Lewis* [1954] 3 W.L.R. 610, and p. 748, *ante*, Roxburgh, J., held that a gift for the benefit of blind persons as a class was a good charitable bequest. The reaction of many of my readers will probably be to ask: what could be more reasonable or more natural than that?; and if the law of charitable trusts were built on sound, logical foundations, I would most heartily concur with the sentiment inspiring this question. But the law, as it appears from the decided authorities, is not as logical or as reasonable as that, and although *Re Lewis* has settled the principle to be applied to trusts for the relief of impotent persons so far as a court of first instance is concerned, the result of a review of the earlier cases by a superior court may bring unexpected results. As it is said that to be forewarned is to be forearmed, an examination of these cases, together with some recent decisions on analogous points, may be of use as well as of interest to readers who try to keep abreast of developments in this branch of the law.

Among the objects enumerated in the preamble to the statute 43 Eliz. I, c. 4, are trusts for the relief of aged, impotent and poor persons. Trusts are therefore good charitable trusts if they can be brought within the wording of this part of the preamble. If this wording only is looked to and the authorities wholly disregarded, the proper, and indeed perhaps the only legitimate, way of interpreting the words " aged, impotent and poor " is disjunctively, that is to say, to regard a trust as coming within this wording if it is a trust (*a*) for the relief of aged persons, or (*b*) for the relief of impotent persons, or (*c*) for the relief of poor persons. (Impotency for this purpose has, of course, no technical significance : it is simply a description of the state of a person who suffers from some mental or physical disability, and thus includes sick persons generally, and the blind as a particular class of the sick. And poverty here does not necessarily mean destitution : " In the cases upon charitable trusts it has long been recognised that charitable assistance may be provided for persons who are not among the poorest members of the community " : *per* Danckwerts, J., in *Martell* v. *Consett Iron Co., Ltd.* [1954] 3 W.L.R. 648, at p. 662.) An alternative method of interpreting the phrase " aged, impotent and poor," so far at least as the qualifications of age or impotency are concerned, is to give a conjunctive meaning to the word " and " and to say that a trust for the aged or a trust for the impotent is only comprehended therein if the additional qualification of poverty is conjoined with the qualification of age or impotency. According to Roxburgh, J., in *Re Lewis*, this is illogical in that poor persons would not then qualify as objects of a charitable trust unless they were either aged or impotent, and that is quite contrary to authority. But some doubt as to the proper method of interpreting this phrase, " aged, impotent and poor " is of very long standing, for, according to Lord Brougham, "it is expressly laid down by a very high authority on this subject, Serjeant Moore, who drew the statute of charitable uses [viz., the statute 43 Eliz. I, c. 4], that a gift to the aged of such a parish is not a charity within the statute unless it expresses that they are also the poor ; for *non constat* they may not be rich . . ." (*Attorney-General* v. *Haberdashers' Company* (1834), 1 My. & K. 420, at p. 428). Perhaps the particular difficulty which Roxburgh, J., felt to exist in the way of any but a wholly disjunctive construction of this phrase may be got over by a third interpretation, under which poverty is held to be the overriding qualification in any trust which it is sought to bring within this phrase, so that a trust to be charitable as being for the relief of aged, impotent and poor persons must be a trust for the relief either of (1) persons who are aged and poor, or (2) persons who are impotent and poor, or (3) persons who are simply poor. Of course, such an interpretation renders the words " aged " and " impotent " in this phrase strictly otiose ; but having regard to the venerable age of this statute and its very curious history in the law of charitable trusts, it would require some temerity to suggest that this is a fatal objection.

Moreover, as will be seen, this interpretation is the only one which can satisfactorily explain a longish line of cases on trusts for the relief of aged persons, in which it was repeatedly held that such trusts are only charitable if coupled with some qualification as to the poverty of their objects. It may, as a matter of grammar, be illogical to construe this phrase in such a way as to couple a qualification of poverty with a qualification as to age in the case of a trust for the relief of aged persons, but if these cases are accepted as sound, the question whether a similar qualification of poverty must be imported into a trust for the relief of impotent persons confronts one with an awkward dilemma. On principle there can be no justification for treating a trust for the relief of impotent persons differently from a trust for the relief of aged persons, and if (on authority) a trust for the relief of aged persons is a valid charitable trust only if the objects of the trust are poor persons as well as aged persons, a trust for the relief of impotent persons can only be a valid charitable trust if its objects are poor as well as impotent. Either, then, the illogical but (apparently) historically respectable construction of the phrase " aged, impotent and poor " is imported into trusts for the relief of impotent persons, thus extending an existing illogicality into another but kindred sphere, or two kinds of trusts which, on grounds of logic, should be treated alike, are to be subjected to different treatment.

It is time now to consider the cases, to which I have made passing reference, on trusts for the relief of aged persons. The earlier cases will be found in *Re Lucas* [1922] 2 Ch. 52, where they were carefully examined in the judgment of Russell, J (as he then was), and I need not go into the details of all of them here, but a reference to some of them is essential if the judgment in *Re Lucas* (which I think is of cardinal importance in any consideration of this subject) is to be properly understood.

The first case referred to by Russell, J., is *Thompson* v. *Corby* (1860), 27 Beav. 649, a case on a bequest of the interest on a sum of money " to be divided equally, twice in the year, between twenty aged widows and spinsters of the parish of Peterborough." Lord Romilly, M.R., in his judgment upholding the bequest as a good charitable bequest, said that if the matter had depended on the statute of Elizabeth I alone he would have thought that the word " aged " would have been sufficient to create a good charitable bequest, but that the case of *Attorney-General* v. *Comber* (1824). 2 Sim. & S. 93, determined that a bequest to the widows and orphans of a parish necessarily implied that it was for such as are suffering from destitution or privation. The comment of Russell, J., on this decision is that here was a statement by Lord Romilly that in his view the word " aged " would have been sufficient, but he did not base his decision on that view : he based his decision upon the authority of a case which says that such a bequest implies destitution or privation.

A similar approach to this problem was taken some years later by Kay, J., in *Re Wall* (1889), 42 Ch. D. 510. The gift was of the interest of a sum of money " absolutely and for ever to be divided into annuities of £10 each, and to be paid half-yearly to an equal number of men and women not under fifty years of age, Unitarians, and who attend " a certain chapel. The testator also directed a tablet to be placed in the chapel " otherwise how should the deserving know of " the gift. Kay, J., thought the question whether this was a good charitable bequest one of some difficulty. His first impression was that, looking at the words of the statute which expressly mentions " aged " people, he could not avoid the conclusion that this was a charitable gift ; but he did not stop at this point, and (in the view of Russell, J.) did not base his judgment on this interpretation of the statute ; he based his decision on an element of poverty which he found to be an implicit condition of benefit under the bequest. Having first found that, in the context, the gift to persons not under fifty years of age was a gift for the benefit of aged persons, within the meaning of the statute, he went on as follows : " . . . in dealing with such a trust I conceive the duty of the trustees would be to give the benefit of it to the deserving of the class, and although ' deserving ' would not of itself indicate that they were to be poor, yet when I couple all these facts together, that they are not to be under fifty years of age,

deserving, members of a congregation of Unitarians, and that the annuities are only £10 each, I cannot help thinking that the true construction of these words must be that poor members of the congregation who have passed that age, and are less able to provide for themselves than they would be if they were younger, are intended to be benefited. I hold, therefore, that the gift is charitable."

Two similar cases were *Re Gosling* (1900), 48 W.R. 300 (gift in favour of " old and worn-out clerks "), and *Re Dudgeon* (1896), 74 L.T. 613 (gift of fund to incumbent of a parish to invest and distribute income amongst " respectable single women of good character above the age of sixty years," to be paid by monthly instalments, but so that no recipient should receive more than £10 per annum). In both these cases the court construed the gift as one for the benefit of persons both aged and poor. In the latter Stirling, J., said that the cases showed that it was not absolutely necessary to find poverty expressed in so many words, but that the court would look at the whole gift and, if it came to the conclusion that the relief of poverty was meant, would give effect to it although the word " poverty " was not to be found in the gift.

In *Re Lucas, supra*, the testator directed that the income of a fund should be given to " the oldest respectable inhabitants in Gunville to the amount of 5s. per week each." The report shows that the case was very fully argued. Russell, J., started off his judgment by confessing that when the will was first read to him it did not strike him as being capable of being construed as a good charitable bequest, because the beneficiaries were to be " the oldest respectable inhabitants," words which by themselves did not in any way connote poverty. He then referred to the argument on behalf of the Attorney-General that the trust was good, either because, being for the benefit of aged persons, it came within the statute of Elizabeth I, or alternatively, that the element of poverty could be spelt out of the gift and it was good on that basis, and went on as follows: " Speaking for myself, I am not satisfied that the requirement of old age would of itself be sufficient to constitute the gift a good charitable bequest, although there are several *dicta* to that effect in the books. I can find no case, and none has been cited to me, where the decision has been based upon age and nothing but age." Russell, J., then examined in detail the cases which I have already referred to, and expressed the following conclusion on them: " Now, upon these authorities, I do not feel myself justified in holding that it has been decided that age and age alone could constitute a gift a good charitable bequest. But I find this: that though the court takes the view that upon the construction of the gift the object of it was to benefit persons in necessitous circumstances, you need not necessarily look for those words expressly in the will. But, if you can construe the gift in such a way as to hold that the testator meant that the persons to be benefited should be in necessitous circumstances, then that introduces the ingredient of poverty and will turn a gift which might otherwise be not a charitable gift into a good charitable gift." On this principle of construction, the particular gift in *Re Lucas* was held to be a good charitable gift.

So the law on the principles to be applied in determining whether a gift for the relief of aged persons is a good charitable gift or not remained until the decision in *Re Glyn's Will Trusts* (1950), 66 T.L.R. (Pt. 2) 510. The testator bequeathed her residuary estate to trustees on trust to build and endow free cottages for old women of the working classes of the age of sixty or upwards. Danckwerts, J., in his judgment, said that he had not the slightest doubt that this was a good charitable bequest. The preamble to the statute (he went on) referred to the relief of aged, impotent and poor people, and these words should be read disjunctively: it had never been suggested that poor people must also be aged to be objects of charity, and there was no reason for holding that aged persons must also be poor to come within the meaning of the preamble to the statute. A trust, in the learned judge's view, for the relief of aged persons would be charitable unless it was qualified in some way which would clearly render it not charitable.

This is a clear decision on the construction of the statute, but three points may be noted on it. First, although *Re Lucas* was cited in argument, no attempt was made by Danckwerts, J., in this case to explain or distinguish the earlier decision. Secondly, the learned judge, after expressing his view on the construction of the statute, did go on to consider whether or not the gift for " old women of the working classes " was a gift for the benefit of poor persons, and he held that it was such a gift; in this respect, therefore, this decision is in precisely the same line as *Re Lucas* and the earlier cases there discussed. And thirdly, there is the reference to a possible qualification which might rob the trust of its otherwise charitable character. But if a trust for the relief of aged persons is *per se* charitable because it comes within the language of the preamble to the statute, it is difficult to see what kind of a qualification can be introduced into the trust to render the trust not charitable, unless it affected its quality as a trust for the relief of aged persons; and in that event, of course, it would not be a qualified (and on that ground non-charitable) trust for the relief of aged persons: it would not be a trust for the relief of aged persons at all.

The decision in *Re Glyn's Will Trusts* was followed in the same year in two other cases, *Re Bradbury* [1950] W.N. 558, and *Re Robinson* [1951] Ch. 198, both decisions of Vaisey, J. I will not refer to these two cases further, not because they are not important, for of course they add the authority of another judge to the view of the statute adopted by Danckwerts, J., in *Re Glyn's Will Trusts*, but because they contain no independent analysis of either the authorities on this subject or the problem with which they were concerned.

To turn now to the cases on trusts for the benefit of the blind, the particular case which arose in *Re Lewis*, there were only two direct decisions on this point before the recent case. In *Re Fraser* (1883), 22 Ch. D. 827, a testator gave a fund " for the benefit of the blind in Inverness-shire." The case is reported upon an application by the Attorney-General for a direction that he, and not the testator's will trustee, should be the person to apply to the Court of Session in Scotland for a scheme to be settled to regulate the trust. In the statement of facts prefixed to the report, however, it is stated that the court (i.e., the Chancery Division) had already made a declaration to the effect that the fund had been effectually given in trust for the benefit of the blind in Inverness-shire, and ordered that the will trustee should be at liberty to apply to the Court of Session for a scheme or otherwise. No argument is reported on the charitability of the bequest, and no reasons given for the decision on that point. In *Re Elliott* (1910), 102 L.T. 528, the gift was for the benefit of such blind persons resident in Newcastle or Gateshead as in the opinion of the testator's trustees intended to be honest and industrious, the testator's intention being that the payment of the income of the fund should not take away those persons' self-respect but should tend to make them fit for work and capable of earning an independent living. Parker, J. (as he then was), held the gift to be a good charitable gift. First he referred to the argument that the trust might include persons who on account of their means might need no

help, but he dismissed this argument on the ground that, on construction, the objects of the gift were persons needing relief "implying such a degree of poverty as could bring them within the ordinary doctrine of the court and make them proper objects of charity." The learned judge then went on to say that at the same time he could not, without in effect overruling several decisions (*Re Fraser* and *Re Dudgeon*, *supra*), hold that this was not a good charitable gift.

Now as to these decisions, it is quite true, as Roxburgh, J., has pointed out in *Re Lewis*, that the gift in *Re Fraser* imported no qualification as to poverty, and that although no argument and no reasons are reported in that case, it is not the practice of the court to make declarations without hearing argument. But there are degrees of argument, and declarations are undoubtedly frequently made when the only argument heard on the question is counsel's avowal that, in his view, the point is unarguable. *Re Fraser* is a decision of the court, but not a satisfactory one. As to *Re Elliott*, the first ground of the decision is similar to the decisions on the old age cases already mentioned and imports a qualification of poverty as a necessary ingredient if a trust for the relief of impotent persons is to be upheld as charitable. The other ground is really *Re Fraser* and nothing more; the reference to *Re Dudgeon* in this part of Parker, J.'s judgment is difficult to understand, as the analysis of that case made by Parker, J., clearly brings out the *ratio decidendi* of the earlier decision, which was that the relief of distress was an essential element of the testator's intention and that without that element the decision would not have been the same.

That was the state of the cases when Roxburgh, J., decided *Re Lewis* and held that a trust for the relief of impotent (blind) persons was a valid charitable trust, without any qualification as to the poverty of the objects whatsoever. I will not attempt to analyse this closely-reasoned decision here, for it will be readily available to readers, but will confine myself to extracting what seems to me the *ratio decidendi* of this case. I think it was really this: having referred to *Re Fraser* and *Re Elliott* (in which, the learned judge said, Parker, J., was "under the influence of what I might call the *Re Lucas* standpoint, because considering the matter apart from authority he thought it necessary, or at any rate desirable, to consider whether in the gift which he had to construe there was an element of poverty"), he said this: "Then [Parker, J.] referred to *Re Fraser* and *Re Dudgeon*. From that I infer that if Parker, J., had failed to find any element of poverty, though he might have doubted whether to hold that the gift was charitable was in accordance with principle, he would have felt bound so to hold by authority . . . I am happy to be bound by the authority of *Re Fraser*."

So there it is. The validity of trusts for the relief of impotent persons *simpliciter* as charitable trusts rests in the last resort on the unsatisfactory decision in *Re Fraser*. The validity of trusts for the relief of aged persons *simpliciter* as charitable trusts rests on the decision in *Re Glyn's Will Trusts*, which is in direct conflict with *Re Lucas*. If the latter case is to be preferred to its successor, there is, at the least, much to be said for the desirability of putting both these kinds of trust on the same footing, so that if an element of poverty is held to be a necessary ingredient in one, it should also be so in the other. But these are questions which it is now impossible for a court of first instance to consider in relation to each other, and any hope of reconciliation must be placed in a higher tribunal.

As a final word, we have become so used to the idea of trusts for the relief of the sick (e.g., hospital trusts) being treated as charitable that it may come as something of a shock to be confronted with authorities which do not reflect this view. But if the matter is taken back two or three centuries nearer to the Elizabethan statute, can we be so certain that a trust for the relief of the sick would have been upheld as charitable if its objects could be drawn from all classes of the community, rich or poor? The charters of some of our older hospitals make it clear that their objects were not the sick, but the sick poor.

"A B C"

Landlord and Tenant Notebook

TRUSTS AND THE LANDLORD AND TENANT ACT, 1954, PART II

SECTION 41 of the Landlord and Tenant Act, 1954 (carrying on what was started by the Leasehold Property (Temporary Provisions) Act, 1951, s. 8), is in some ways a remarkable enactment. It runs: "(1) Where a tenancy is held on trust, occupation by all or any of the beneficiaries under the trust, and the carrying on of a business by all or any of the beneficiaries, shall be treated for the purposes of s. 23 [which defines the tenancies affected by Pt. II] of this Act as equivalent to occupation or carrying on of a business by the tenant . . . " and the rest of the subsection makes apt provision for construing certain references in the transitional provisions (Sched. IX) to the same effect; for likewise construing the reference to disregarding, when determining the rent under a new tenancy of licensed premises, added value if the benefit of a licence belongs to the tenant; and for ensuring that a change of trustee shall not be treated as a change of tenant. Subsection (2) says: "Where the landlord's interest is held on trust the references in s. 30 (1) (*g*) of this Act [the wanted-for-self ground for opposing application for new tenancy] to the landlord shall be construed as including references to the beneficiaries under the trust or any of them; but, except in the case of a trust arising under a will or on the intestacy of any person, the reference in subs. (2) of that section to the creation of the interest therein mentioned shall be construed as including the creation of the trust."

What is remarkable about the above is this: our law, as we have all been taught, derives from three sources—common law, equity and statute law. The dominant partner in this *ménage à trois* is obviously the one last mentioned: Parliamentary legislation can countermand or vary or add to any rule laid down by common law and equity, and can, moreover, regulate the relationship between those two. In 1873 it put an end to unhappy differences which had arisen by what has been called "fusion"; but what s. 25 (11) of the Judicature Act of that year actually said was: "Generally in all matters . . . in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail."

It was the function of equity to prevent injustice occasioned by the common law, its method being to step in and restrain the owner of legal rights from exercising or enforcing them. When trusts came into being, it was equity that made them effective; for a trust has been described as "the nominal

ownership of property being vested in one or more persons who are bound to exercise their rights so that the benefit of the property may be enjoyed by others than themselves."

When leases were appropriately called " terms " because the parties knew when the estate created by the grant would or at least could terminate, there could be no difficulty about making trustees exercise their rights so that the benefit of the property might be enjoyed by others than themselves. But when legislation designed to give tenants security of tenure became the order of the day, and the right to such security was made conditional on occupation of the demised premises or by the landlord's not desiring to occupy it, Parliament must have realised that the fusion was not always working out as well as intended. For neither the persons in whom nominal ownership was vested, nor the others who were to enjoy the benefit of the property, would be able to take advantage of the security of tenure or the opportunity of defeating it.

That is what has in fact happened in connection with some of the provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, though nothing has been done about it by later Acts. It has been suggested, that is, that a tenant holding over who has no beneficial interest at all can lay claim to a " statutory tenancy " : this *obiter* by Morton, L.J., in *Lawrance* v. *Hartwell* [1946] K.B. 553 (C.A.) ; but the proposition seems doubtful. *Mount* v. *Childs* (1948), 64 T.L.R. 559 (C.A.), showed that the beneficiary of a trust created by a protected tenant's will was not qualified for a statutory tenancy. Then the diligence of Mr. Megarry, who in such matters takes the world for his parish, has drawn our attention to a decision in the Far East, *Wong Yau King* v. *Lau Nai Lam* (1951), 34 H.K.L.R. 345 (C.A.), which would support a contention that unauthorised assignment by a trustee of a protected term would constitute a ground for possession under the Rent., etc., Restrictions (Amendment) Act, 1933, Sched. I (*d*). But trustees of reversions and their *cestuis que trust* have been shown to be unable to take advantage of para. (*h*) of that Schedule—house reasonably required by landlord as residence—the trustee not requiring it for himself but for a beneficiary (*Parker* v. *Rosenberg* [1947] K.B. 371 (C.A.)), nor (in Scotland) could trustees of a church recover possession of a house wanted as a residence for the minister, who was one of them (*Trustees of Rockcliffe United Free Church* v. *Gilbert* [1925] S.L.T. 113).

Occasionally attempts have been made to give effect to steps taken by beneficiaries who have sought to exercise the rights vested in their trustees, and *Jones* v. *Phipps* (1868), L.R. 3 Q.B. 567, can be cited as an example of what can be achieved. A married man who had contributed to the purchase of a farm let to the defendant when it was bought under the terms of the marriage settlement had, ever since, dealt with the tenant as if he and not the trustees were landlord. In fact, the tenant was blissfully unaware of the existence of the trustees, who lived in different places, neither of them near the farm, whereas the beneficiary was its neighbour. Unmindful of the legal position, the *cestui que trust* served the defendant with a notice to quit, the validity of which was upheld on the ground that he had had general authority to manage the property from its legal owners. The decision occasioned an *obiter dictum* in *Seaward* v. *Drew* (1898), 67 L.J.Q.B. 322, to the effect that a notice to quit given by one who held the whole of the equitable interest would be valid, which was dissented from in *Stait* v. *Fenner* [1912] 2 Ch. 504. In *Re Knight and Hubbard's Underlease ; Hubbard* v. *Highton* [1923] 1 Ch. 130, on the other hand, a " very technical objection " to a notice to quit given by a firm of solicitors who had phrased it " . . . as solicitors and agents for and on behalf of " a friendly society whose property was vested in trustees (nominated by itself) was rejected.

But circumstances have to be exceptional before courts can recognise that trustee and *cestui que trust* have, as it were, acquired running powers on each other's lines. In *Walters* v. *Northern Coal Mining Co.* (1855), 5 De G.M. & G. 629, a mining lease had been granted to the trustees of a " joint stock company," the term being forty years but the lessees having the right to determine it every third year. The enterprise failed, the company abandoned the mine in the second year of the term, but eight more years passed before it was dissolved. The official manager then purported to exercise the option for the next occasion when it could be exercised, whereupon the lessor's successor in title claimed eight years' arrears of rent and damages for breaches of covenant. It was argued that the company had " accepted the lease " and that the rent was an " equitable debt." Fusion was yet to come, but the Lord Chancellor himself (Lord Cranworth) held that " the rights of a landlord against those who occupy his land are *legal* rights well defined and understood." (This would hardly apply in forfeiture cases !) Not long after, another illustration of this insistence on trustee and *cestui que trust* each attending to his own business was afforded by *Churchward and Blight* v. *Ford* (1857), 2 H. & N. 446 : trustees under a will were charged with the duty of paying the rent of a property to the testator's widow for life. The tenant, defendant in the action for ejectment, in fact paid his rent direct to the widow. A notice to quit was given to the tenant by the executors of the will (one of whom, it so happened, was also a trustee), and a new tenancy agreement then granted by the widow, the trustees assenting. In these circumstances it was held that the trustees could not sue for use and occupation, for no contract between them and the defendant was implied.

It should be carefully noted that the Landlord and Tenant Act, 1954, s. 41, does not in any way authorise trustee and *cestui que trust* to exercise each other's functions : the trustee remains the person in whom lease or reversion is vested and who is *bound to exercise* his rights so that the benefit of the property may be *enjoyed by* others. And this means more work if less anxiety for trustees, especially those holding tenancies in trust, than was the case when tenancies expired according to the agreements made. Trustees of charities have, it so happened, figured mostly in the law reports in cases in which they have tried to establish that they were not carrying on a business, and thus not infringing restrictive covenants. Apart from the fact that such attempts have, in the recorded cases, consistently failed, the definition of " business " in the Landlord and Tenant Act, 1954, is so wide that the operation of a profit motive (the absence of which was the defendant's main argument in *Rolls* v. *Miller* (1884), 27 Ch. D. 71 (C.A.)) could not come into the picture. Consequently it will be the task of trustees in such a position—they were trustees of a Home for Working Girls—on the determination of the lease of any property occupied by the beneficiaries, to see that the requirements of the Landlord and Tenant Act, 1954, s. 25, are complied with, to take steps to obtain new leases or compensation, and the like. Conversely, it will not do for trustees of a reversion, when the tenant requests or demands a new lease of business premises, and their *cestui que trust* wishes to occupy those premises either for the purposes of his own business or as his residence, to throw up the sponge because they, the trustees, have no intention of occupying the premises themselves.

R. B.

ILLEGITIMATE CHILDREN

IT is proposed to review in this article some aspects of the law relating to illegitimate children. Every lawyer knows that persons born illegitimate suffer a number of disabilities at law, but perhaps one may speculate whether in a century's time the law's present attitude may be regarded in the same light as we now regard such out-of-date things as deodand and trial by battle. Recent statistics show that one birth in every twenty-one in this country is illegitimate.

The term " illegitimate child " includes a child born (*a*) to a spinster; (*b*) to a widow (see also *Re Overbury* [1954] 3 W.L.R. 644; *ante*, p. 768) or woman whose marriage has been dissolved by divorce or annulment so long after her husband's death or the decree that he cannot possibly be the father; (*c*) to a married woman if shown not to be the issue of her husband, and (*d*) to a woman whose " marriage " is invalid even though her " husband " is the father. It avails not in the latter case that the " marriage " has been contracted in the utmost good faith, and if a woman who has every reason for believing that her husband is dead purports to marry again the children of the second union will be illegitimate if it is shown that her husband was alive at the time of the purported marriage ceremony; if her first husband later dies or is divorced or divorces her, marriage to the second " husband " after the divorce or death will not legitimate any of the children born before such latter ceremony of marriage. To this, however, there are two exceptions. The first is where the children are legitimated by foreign law in circumstances recognised by the English courts (see below). The second is where the wife has obtained a decree of dissolution of marriage on presumption of her first husband's death pursuant to the Matrimonial Causes Act, 1950, s. 16. If she then goes through a ceremony of marriage with another man, this marriage is valid and the children of it are legitimate notwithstanding any subsequent proof that the first husband is alive (Latey on Divorce, 14th ed., p. 98). A child born after and during the marriage of his parents, even one " born in the vestry," as the saying is, is presumed legitimate unless it be shown that the husband is not the father. Children of a voidable marriage are deemed legitimate despite its annulment, unless shown to be illegitimate by other evidence (Matrimonial Causes Act, 1950, s. 9).

Evidence of non-access may now be given by either spouse, though neither is a compellable witness in any proceedings, and the contrary rule in *Russell* v. *Russell* [1924] A.C. 687 has been abrogated (*ibid.*, s. 32).

Succession. The term " child " in a deed or will normally means " legitimate child," but this presumption can be displaced (Halsbury's Laws of England, 2nd ed., vol. 17, p. 585) and there are various cases in the books where illegitimate children have benefited under a will; a recent example is *Re Herwin* [1953] Ch. 701; 97 SOL. J. 570. Illegitimate children are not " issue " who take on an intestacy pursuant to the Administration of Estates Act, 1925, s. 46, but legitimated children and their spouses, children or remoter issue may take an interest in the estate of an intestate dying after the date of legitimation or under any disposition coming into operation after such date (Legitimacy Act, 1926, s. 3). By s. 9 of that Act, however, an illegitimate child, whose mother dies wholly or partly intestate and leaves no legitimate issue, takes any interest in her property which he would have taken if born legitimate and, if he is dead when his mother dies, his issue take similarly from her estate. Likewise, by s. 9 (2), when the illegitimate person himself dies intestate, wholly or partly, his mother, if surviving, takes any interest therein which she would have taken if he had been born legitimate and she had been the only surviving parent. The above is an outline only of the position, however, and for a fuller statement of the law the reader is referred to Halsbury, 3rd ed., vol. 3, pp. 103–106.

Whether a statute applies only to legitimate children depends on the context; obviously, the legislation relating to the protection of children applies to all children, legitimate or not. Various statutes relating to social security and provident and like societies make special provision as to illegitimate children, while a claim may be made under the Fatal Accidents Acts notwithstanding that the relationship to the deceased is illegitimate (Law Reform (Miscellaneous Provisions) Act, 1934, s. 2). If the context does not show that illegitimate children are included, a statute is deemed to apply to legitimate ones only (see cases cited in Stroud's Judicial Dictionary under " Child ").

Legitimation. The Legitimacy Act, 1926, s. 1, provides that, where the parents of an illegitimate child marry one another, the marriage shall, if *the father* was or is at the date of the marriage domiciled in England or Wales, render that child, if living, legitimate from the date of marriage, or, if the marriage was before the commencement of the Act, from the date of its commencement (1st January, 1927). The Act does not, however, legitimate a person whose father or mother was married to a third person at the time of birth (s. 1 (2)). The term " married to a third person " means that there was a valid marriage to that third person; so if that marriage were void because, for example, it was bigamous, then its existence would not prevent a child of a union between one of those spouses and an unmarried person from being legitimated by a later valid marriage between the two latter. Again, if a valid marriage ceremony has been performed but the marriage is annulled for incapacity that marriage is deemed void *ab initio*, so that a child born during the marriage whose parent is one of the spouses is legitimated by that parent's subsequent marriage to the other parent (*Newbould* v. *A.-G.* [1931] P. 75); the same rule, apparently, applies in respect of marriages annulled on other grounds (Rayden on Divorce, 6th ed., p. 231).

In addition, a child may be legitimated by operation of the law of some country other than England which recognises legitimation by subsequent marriage, provided that *the father* was at the time of the marriage domiciled in a country the law of which recognises legitimation by subsequent marriage (Legitimacy Act, 1926, s. 8, extending the common-law recognition of legitimation by subsequent marriage of a child whose father was at the time of the birth and the marriage domiciled in such a country). This rule has been broadly stated here and a more detailed picture will be found in Halsbury, 3rd ed., vol. 3, p. 94.

A person legitimated by subsequent marriage is treated as if born legitimate in all questions relating to whether he is a British subject (British Nationality Act, 1948, s. 23). Birth within British territory, whether legitimate or not, confers British citizenship (*ibid.*, s. 4).

Maintenance of illegitimate children. First will be discussed proceedings between husband and wife to maintain their children who were illegitimate at birth. If the marriage is invalid, proceedings for an affiliation order can be brought by the " wife " against the " husband " in respect of children born before the " marriage "; if she has taken proceedings for the annulment of the marriage, she can seek maintenance under the Matrimonial Causes Act, 1950, s. 26, for the children born during the marriage (*Langworthy* v. *Langworthy* (1886),

11 P.D. 85) but not, apparently, for any born before the marriage because the marriage, being invalid, has presumably not legitimated these. The statements in the last sentence apply only to an invalid marriage, e.g., one void *ab initio*, because, say, one party was under sixteen years of age; if the marriage is valid but is later annulled on a ground mentioned in the Matrimonial Causes Act, 1950, s. 8, any child born before the marriage ceremony will, by s. 9, have been legitimated by it and maintenance may properly be claimed for him under s. 26, assuming neither parent was married to a third person at the birth (*M.* v. *M.* [1946] P. 31). Where proceedings for a divorce or judicial separation or for a maintenance order under the Summary Jurisdiction (Separation and Maintenance) Acts are being taken, maintenance may be awarded to the wife in respect of a child legitimated by her subsequent marriage with her husband (*Colquitt* v. *Colquitt* [1948] P. 19; 91 SOL. J. 310), but if either party was married to a third person at the time of the birth no maintenance can be awarded in those proceedings for children born during the marriage to the third person (*Galloway* v. *Galloway* [1954] P. 312; *ante*, p. 336, where all the cases are reviewed). This case could, no doubt, be distinguished where the child had, despite such marriage to a third person, become legitimated by extraneous law in circumstances recognised by the English courts (see above).

Where the parents' marriage has failed to legitimate a child can the wife take proceedings for custody and maintenance under the Guardianship of Infants Acts? It was suggested *obiter* by Denning, L.J., in *Packer* v. *Packer* [1954] P. 15; 97 SOL. J. 403, that she can, and a metropolitan magistrate has granted custody of an illegitimate child under those Acts (97 SOL. J. 887), but it is doubtful whether they apply to children who are illegitimate (though, presumably, they do to legitimated children). In *Galloway* v. *Galloway*, *supra*, there was a strong expression of opinion that the term "child" in a statute relating to matrimonial proceedings normally does not include an illegitimate one, and although in the Guardianship of Infants Acts the term is "infant" the same principle would seem to apply.

If the wife is precluded, then, from seeking maintenance under the Guardianship of Infants Acts for a child born to her of her husband and not legitimated, can she seek an affiliation order against him? To obtain such an order she must show that she is "a single woman," and, whether she is or not *quoad* third parties, she is not a single woman *quoad* her own husband, certainly when she is apart from him owing to her fault and not his (*Mooney* v. *Mooney* [1953] 1 Q.B. 38; 96 SOL. J. 730). It is doubtful whether she would be deemed a single woman when he has left her through his fault, and one gets the startling result that a married woman may be unable to get maintenance in respect of an illegitimate child at all from the father, her own husband. Affiliation orders could, however, be obtained by the National Assistance Board or a local authority in such circumstances under the National Assistance Act, 1948, s. 44, or the Children Act, 1948, s. 26, and the benefit of these could be transferred to the mother when the child ceased to be maintained by public funds; the authorities might perhaps co-operate in these rather rare circumstances by themselves bringing the proceedings.

AFFILIATION PROCEEDINGS

The questions now to be considered will all relate to cases where the mother and the putative father are not married to one another.

By the Bastardy Laws Amendment Act, 1872, s. 3, a single woman may seek an affiliation order against the putative father. If it is granted, he may, by s. 4, be ordered to pay her costs, the expenses incidental to the birth of the child (maternity benefit is disregarded by virtue of the National Insurance Act, 1946, s. 16) and a weekly sum for the maintenance and education of the child. The maximum weekly sum awardable is now thirty shillings (Affiliation Orders Act, 1952, s. 1) and the order is usually expressed to run till the child is sixteen; by s. 2 of the 1952 Act, if the child is engaged in a course of education or training after attaining the age of sixteen and is not in an approved school or in the care of a local authority or (with one exception) the subject of a "fit person" order, the order can be extended in two-yearly periods up to the time he is twenty-one. It would, obviously, be a ground to revoke such an extended order if he ceased his course of training. Application for such an extension may be made by the mother or by any person having the custody of the child (other than a local authority or "fit person"). To judge from cases on a like provision in another statute, such an extended order may be made although the original order has expired (*Norman* v. *Norman* [1950] 1 All E.R. 1082; 94 SOL. J. 354), and the court should inquire as to the desirability of the proposed course of education (*Nowell* v. *Nowell* [1951] 1 All E.R. 474; 95 SOL. J. 270).

By the Bastardy Laws Amendment Act, 1872, s. 4, the weekly payments may be ordered to run, if the court directs, from the date of birth if the application was made before birth or within two months of it; otherwise the payments start when the order is made.

Single woman. The meaning of this term is discussed in an article at 95 SOL. J. 408. A married woman cohabiting with her husband is not deemed to be a single woman and, if she has neglected to take affiliation proceedings against the putative father before the marriage, an affiliation order cannot be made against him at her instance while cohabitation continues (*Taylor* v. *Parry* [1951] 2 K.B. 442; 95 SOL. J. 61), though the authorities could get an order if the child became chargeable to public funds. A married woman who has deserted her husband and has not resumed cohabitation can be a "single woman," however, though she may be living under the same roof as he is (*Watson* v. *Tuckwell* (1947), 63 T.L.R. 634). A married woman living apart from her husband through her fault is deemed a single woman (*Jones* v. *Evans* [1944] K.B. 582, where the wife's adultery had not been condoned and the husband was a soldier serving abroad). That case can be distinguished from *Marshall* v. *Malcolm* (1918), 82 J.P. 77, where the husband was, at the material times, a sailor serving afloat but had forgiven his wife's adultery and reinstated her as wife, so that he was, therefore, notionally cohabiting with her. An intention to forgive is insufficient to restore notional cohabitation until the wife has been reinstated as a wife (*Hockaday* v. *Goodenough* [1945] 2 All E.R. 335; 89 SOL. J. 392).

Under the old poor law a husband was liable to maintain the children of his wife begotten of another man before the marriage, whether legitimate or illegitimate, but this liability was abolished by the National Assistance Act, 1948. Several cases decided prior to 1948 had, as their basis, this old liability and affiliation orders were refused on the ground that if they were made there would be two people, viz., husband and putative father, liable to maintain the same child, e.g., *Stacey* v. *Lintell* (1879), 4 Q.B.D. 291; *Peatfield* v. *Childs* (1899), 63 J.P. 117. The last-mentioned case is sometimes given as authority for the view that an affiliation order cannot be obtained by a woman, once she has married, for a child born before the marriage, even though she is apart

from her husband through his fault, e.g., where he has, without justification, turned her out. It is submitted, however, that since the National Assistance Act this is no longer the law, if it ever was, and that now a married woman who can show herself to be a single woman may obtain an affiliation order for a child born before or after her marriage. This argument is further developed at 115 J.P. News. 679.

It would seem that now the term " single woman " includes one who, at the date of the application for the summons, is a spinster, a widow and a woman whose marriage has been dissolved or annulled; in all these instances save that of the spinster the fact that the birth occurs so soon after the husband's death or the decree as to raise a presumption of legitimacy has nothing to do with the mother's status as a single woman. It is also clear that, in respect of a child born after the marriage, a married woman who is not living or deemed to be living with her husband is a single woman where she has committed some uncondoned matrimonial offence (*Jones* v. *Evans*, *supra*), and it seems to follow logically that she is also a single woman if he has left her unjustifiably or they have parted by agreement after he has forgiven her adultery and restored her to the status of wife or without any matrimonial offence by either (see *obiter dicta* of Lord Goddard, C.J., in *Taylor* v. *Parry*, *supra*, and *Mooney* v. *Mooney*, *supra*). A married woman would be deemed to be living with her husband if he had forgiven her adultery and restored her to the status of wife and then left her, e.g., for a business trip, intending to return.

When the child was born before the marriage, the wife is a single woman if she has obtained a divorce, judicial separation or a separation order, i.e., one containing a non-cohabitation clause (*Boyce* v. *Cox* [1922] 1 K.B. 149; 66 SOL. J. 142). What is the position, however, if she has only a maintenance order or they are apart because of a matrimonial offence by either or by virtue of a separation agreement, written or implied? It is submitted that she is still a " single woman " and that the old view that she cannot get an affiliation order is no longer tenable.

The suggestion that a wife, apart from her husband by mutual agreement or as a result of a maintenance order, can obtain an affiliation order is unsupported by authority (save where the child is born as a result of her adultery after the marriage). Yet it seems a logical enough deduction from the cases, for she is apart from him in fact, there is no intention of resuming cohabitation and he is no longer liable to maintain any pre-marriage children and has never been liable to maintain her post-marriage illegitimate children. On the other hand, it is plain from *Marshall* v. *Malcolm*, *supra*, that the law can contemplate the idea of no man being liable to maintain an illegitimate child while a married couple live together (child born after marriage but husband forgives wife, so that she does not become a single woman). Also the line of cases culminating in *Jones* v. *Evans*, *supra*, shows that the basis of their reasoning, amongst other things, is that a wife who commits adultery after marriage renders herself unworthy of her husband's protection and so automatically becomes a single woman, as it were, which is rather different from a mere separation by agreement long after the child's birth and forgiveness of the adultery. How far the term " single woman " now extends is by no means clear and its meaning is one of the various aspects of bastardy law that still remain obscure. The cases are in conflict whether a woman who marries after the application for the summons but before the hearing is a single woman or not (see Lushington's Law of Affiliation and Bastardy, 7th ed., p. 7).

Venue and limitation. The Magistrates' Courts Act, 1952, s. 51, provides that the complaint for an affiliation order shall not be heard except by a magistrates' court acting for the petty sessions area in which the mother resides. In a county, she is limited to the county division in which she is residing and cannot choose any county division nor can she move to another area solely because she thinks her chances will be better in that area (*Myott* v. *Barber* (1863), 27 J.P. 598). The view that one who is comely among the maidens will have a better deal from a judge or magistrates of the male sex than one who is less well-favoured physiognomically has received judicial notice (*Shave* v. *J. W. Lees* (*Brewers*), *Ltd.* [1954] 1 W.L.R., at p. 1302; *ante*, p. 717). In an article in the *Journal of Criminal Law* for July, 1954, it is pointed out that her residence at the date of hearing now seems to be the material one and that difficulties may arise if she has changed her residence between the application and the hearing. " Residence " normally means where a person sleeps, and if the mother has no settled abode, e.g., a gipsy, she may apply in the division in which she happens for the time being to be (*Lawrence* v. *Ingmire* (1869), 33 J.P. 630). The writer believes that there were some old cases—though they cannot be named—in which persons lived on the parish boundary. Where the boundary went through the house it was held that the person resided in the parish in which his bedroom was situate, and when the boundary traversed the bedroom it was held that he resided in the part where his bed was. Then came a case where the boundary bisected the bed and it was held that where the person's head lay was his place of residence.

Application for a summons may be made before the birth of the child (in which case it must be on oath) or—

(*a*) within twelve months from the birth of the child; or

(*b*) at any time on proof (on oath when applying) that the defendant has within twelve months next after the birth of the child paid money for its maintenance; or

(*c*) at any time within twelve months next after the father's return to England or Wales on proof that he ceased to reside in England or Wales within the twelve months next after the birth of such child.

The day of the birth is excluded in computing the twelve months (cf. *Stewart* v. *Chapman* [1951] 2 K.B. 792; 95 SOL. J. 641). It is the laying of the complaint that must be within the period, and if this is done the summons may be served and the case heard outside it (*Potts* v. *Cumbridge* (1858), 22 J.P. 594). If the case is dismissed on a technical point and not on merits, a fresh summons may be issued on the original complaint even though the twelve months have by then expired (*R.* v. *Lancashire Justices* (1874), 38 J.P. 215). Otherwise, any fresh application must be made within the time limit (see further, under " Second Application and Appeal," *post*, p. 846.)

By the Age of Marriage Act, 1929, s. 2, there is no time limit to proceedings by a mother in respect of a child born as a result of a marriage which is void because one of the parties was under sixteen years of age.

The special provisions as to Scotland and Northern Ireland in respect of venue are mentioned below. Local authorities and the National Assistance Board are subject to special provisions as to venue and have a longer time limit (National Assistance Act, 1948, s. 44; Children Act, 1948, s. 26). When a mother's application is out of time, the authority or board, if she places her child in the local authority's care or receives national assistance for the child, could nevertheless take proceedings and obtain an affiliation order against the father and the benefit of that affiliation order could later be transferred to the mother; there is specific power to do this under the National Assistance Act, 1948, s. 44 (6), but

(*continued on p.* 845)

DECLARATORY JUDGMENTS

An elementary legal truth was put by Pickford, L.J., in these words: "The mere fact of being entitled to a right does not give a cause of action, which only arises where there is interference, actual or threatened, with the right, and in that case there is a right to relief, in the first case by damages or injunction or both, or possibly by specific performance, and in the latter by injunction" (*Guaranty Trust Co. of New York* v. *Hannay & Co.* [1915] 2 K.B. 536, at p. 558). It is a truth which will out, for instance, when the statutes of limitation come to be interpreted, for these run not from the creation but normally from the breach of a right. In general solicitor-and-client terms the distinction of legal rights from causes of action marks the dividing line between the occasion for consultative stocktaking ("What is my position?") and the awful contemplation of litigation ("What can I do about it?").

But there is a difference, too, between the truth and the whole truth, which is where R.S.C., Ord. 25, r. 5, comes in. "No action or proceeding," says that rule, "shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not." Does this mean that it is possible to sustain an action without a cause of action, to enlist the court's aid in the stocktaking, to holla with effect before being hurt? It is possible, yes, but the cases we are about to examine show that a claim for such intangible relief will, in the words of Singleton, L.J., "be carefully watched."

The leading case is *Hannay's* (*supra*). The trust company had been holders of bills of exchange accepted by the defendants for the price of goods sold. The bills were met by the defendants, but owing to a third party's fraud the goods were not delivered. The defendants sued the trust company in the American courts to recover the amounts paid on the bills, and succeeded in the circuit court, but the United States Court of Appeals ordered a new trial. English law, it was admitted, governed the matter, a consideration which possibly suggested to the trust company's advisers their next step. They were defendants in America, but now, while the new trial was still pending, they turned themselves into plaintiffs over here, and sought declarations to the effect that they were not liable to repay the acceptors of the bills.

The case did not raise in a pure form the question of the jurisdiction of the court to grant a declaration and nothing else, for the plaintiffs also claimed an injunction to restrain the defendants from continuing with the American proceedings. However, the Court of Appeal did contrive to consider, in refusing to strike out those paragraphs of the indorsement of the writ which claimed the declarations, the precise ambit of Ord. 25, r. 5. Their lordships' conclusions were various, Buckley, L.J., taking the view that the declarations and the injunction claimed were in this case each an entirely separate matter, thought that the rule did not authorise a declaration as to a plaintiff's obligations towards (as distinct from his rights against) a defendant where the defendant and not the plaintiff had the cause of action, but this put him in a minority as far as concerned the decision not to strike out the claim. Bankes, L.J., took a middle course. Only Pickford, L.J., was prepared to give r. 5 its wide literal construction. Founding himself on *London Association of Shipowners* v. *London & India Docks Committee* [1892] 3 Ch. 242 and *Dyson* v. *A.-G.* [1912] 1 Ch. 158, the learned lord justice held—

(1) that there might be a right to a declaration although the person asking for it had no cause of action apart from the rule; and

(2) the declaration might be made at the instance of the person against whom the right was claimed, i.e., that declarations of obligation or no obligation (to adopt the terminology of Buckley, L.J.) as well as of right could be made; but

(3) that the party seeking the declaration must be a person interested in its subject-matter. A stranger to the transaction could not ask the court to express its opinion in order to help him in other transactions; and

(4) that the making of such a declaration was a matter within the discretion of the court and in particular it would hardly ever be made to negative the liability of a person in another existing or possible action.

It is ironical that of these diverse opinions the one which has achieved most usefulness in the way of quotation is that of Pickford, L.J., who expressed some misgiving whether it was not *obiter*. (He would have refused to strike out anyway because it was not a plain case for striking out.) Indeed, the four heads under which we have arranged the substance of his judgment serve remarkably well as a guide to the classification of the other cases on the question of "naked" declarations, and we propose, respectfully, to call them the Pickford heads.

Loudon v. *Ryder* (*No. 2*) [1953] Ch. 423 was an action for an injunction to restrain the defendant from asserting an interest in certain investments belonging to the plaintiff and for damages. Harman, J., considered that the gist of the action was of the nature of slander of title, and that as no malice was proved and no actual damage alleged, the action for damages and injunction would not lie. But the learned judge proceeded to remark that the defendant had never withdrawn his wrongful claim and if the action were dismissed he might continue to maintain it, thus preventing the plaintiff from making herself mistress of her own property. Was she then to be put to the cost of starting a new action, to be met, perhaps, with the same defence? His lordship cited Ord. 25, r. 5, and *Hannay's* case and went on: "Accordingly I conceive myself entitled, with a view to quieting the plaintiff's title, and to prevent further mischief, to pronounce a judgment against the defendant, limited in form to a declaration that, as personal representative of his sister, he has no right, title or interest" in the investments in the plaintiff's name. Here was a declaration granted in the absence of any other cause of action.

Substantially speaking, however, the declaration in *Loudon* v. *Ryder* was a declaration of right. For an example of a declaration actually granted relating not to the rights of the plaintiff but to his obligations we turn to the celebrated case, already mentioned as one of the authorities relied on by Pickford, L.J., of *Dyson* v. *A.-G.* [1912] 1 Ch. 158. This is the *locus classicus* in the law for the tactical advantage of getting one's blow in first. For the purposes of the projected land values duty John Dyson had been called upon to complete a form of return. He disputed his liability to do so. Penalties were prescribed for failure to make the return, but it was the proposed victim of the penal legislation who constituted himself plaintiff, and he succeeded in obtaining from the court a declaration, without more, that he was not bound to comply with the notices which had been served upon him. Of the method of procedure which he had chosen, Fletcher Moulton, L.J., said "it is the most convenient method of enabling the subject to test the justifiability of proceedings on the part of permanent officials purporting to act under

(*continued on p.* 844)

Ada Cole Memorial Stables, 5 Bloomsbury Square, W.C.1. Help urgently needed for the rescue of aged, unfit and ill-treated horses, ponies and donkeys.

Animal Health Trust, 14 Ashley Place, Westminster, London, S.W.1. Undertakes research work on behalf of all sections of livestock. Assists men and women desirous of entering veterinary profession.

Army Benevolent Fund, 20 Grosvenor Place, London, S.W.1. Instituted to secure more efficient aid and support for military charities. Nearly £2,500,000 has already been allocated in grants to these funds.

Bow Mission, 3 Merchant Street, London, E.3. Maintains a Home of Rest for sick, convalescent and needy old folk. Work includes provision of Christmas cheer, country holidays for children and old folk.

British and Foreign Bible Society, 146 Queen Victoria Street, London, E.C.4. Exists for the wider circulation of the Holy Scriptures without note or comment. In this enterprise it unites Christians of almost every communion.

British Deaf and Dumb Association, 21 Queen Street, Paisley. Maintains a home for the aged and infirm deaf and dumb, and provides financial assistance for those in need.

British Empire Society for the Blind, 121 Victoria Street, London, S.W.1. Seeks to destroy the sources of blindness ; to provide eye clinics and to care for and educate the blind people of the Colonial Empire.

British Home for Incurables, Streatham, S.W.16. Provides the benefits of home life to 100 incurable invalids and also life pensions for 200 others able to be with friends or relatives.

British Legion, Pall Mall, London, S.W.1. Finances the British Legion's welfare, benevolent and rehabilitation work among ex-Service men and women of ALL ranks, ALL Services, ALL wars, and their dependents.

British Limbless Ex-Service Men's Association, 31 Pembroke Road, London, W.8. Provides assistance to all limbless ex-Service men in all matters connected with welfare and employment.

British Red Cross Society, 14 Grosvenor Crescent, London, S.W.1. Takes no account of race, creed or political consideration ; it is a power for good in a troubled world.

British Sailors' Society, 680 Commercial Road, London, E.14. Maintains Residential Clubs and Canteens in ports around coasts of United Kingdom and Eire, and overseas. Assistance for sailors and families.

British Union for the Abolition of Vivisection, Inc., 47 Whitehall, S.W.1. To obtain the prohibition of all experiments upon living animals now being performed under the Cruelty to Animals Act, 1876.

Caxton Convalescent Home, 1 Gough Square, London, E.C.4. For men and women over 15. The only Convalescent Home for the Printing and Kindred Trades situated at Limpsfield, Surrey.

Central Council for the Care of Cripples, 34 Eccleston Square, London, S.W.1. A national voluntary organisation founded to protect the interests of all who are crippled.

Children's Aid Society, 55 Leigham Court Road, London, S.W.16. Seeks to give a chance in life to the neglected and unwanted child.

Church Army, 55 Bryanston Street, London, W.1. Carries on a great programme of evangelistic and social work which meets almost every phase of human need from babyhood to old age.

Church Missionary Society, 6 Salisbury Square, London, E.C.4. Carries the Gospel to the non-Christian world. Helps to spread Christian education in Africa and the East. Is the largest medical missionary venture.

Church Moral Aid Association, 20 John Street, Theobald's Road, London, W.C.1. This Association assists committees to found Rescue Homes and acts as Custodian Trustee for properties.

Church of England Children's Society, Old Town Hall, Kennington Road, London, S.E.11. Rescues and cares for children in need or those who are cruelly treated or in moral danger. No destitute child refused.

Clapton Methodist Mission, 17 Knightland Road, London, E.5. Provides holiday accommodation for old-age pensioners, convalescents and children from East London.

Cripples Help Society (Manchester and Salford District), 5 Cross Street, Manchester 2. A voluntary society engaged in work for the welfare of the physically handicapped and disabled.

Distressed Gentlefolk's Aid Association, 10 Knaresborough Place, London, S.W.5. For the relief of British gentlepeople in distress. Makes weekly grants to over 300 pensioners, mostly aged and infirm.

Dr. Barnardo's Homes, Barnardo House, Stepney Causeway, London, E.1. Supports 7,000 boys and girls. Over 141,000 children rescued in 86 years. No destitute child ever refused admission.

East End Mission, 583 Commercial Road, London, E.1. Ministers to the last, the least and the lost, irrespective of creed. Maintains eight centres in East London, including a Social Department and Settlement for Christian Workers.

Empire Rheumatism Council, Tavistock House (N), Tavistock Square, London, W.C.1. To organise research into the causes and means of treatment of rheumatism, arthritis, fibrositis and allied diseases.

Ex-Services Welfare Society, Temple Chambers, Temple Avenue, London, E.C.4. The *only* voluntary *specialist* organisation supplementing the work of the State, exclusively for men and women of H.M. Forces.

Fairbridge Society, 38 Holland Villas Road, London, W.14. To promote the settlement within the Commonwealth of deprived children resident in the U.K., and to establish schools for the education of these children.

Family Welfare Association, 296 Vauxhall Bridge Road, S.W.1. Provides a service of advice and guidance in personal and family problems.

Farningham and Swanley Homes for Boys, South Darenth, Kent. Homes for 350 homeless and orphan boys, most of them fatherless, many of them motherless as well.

Florence Nightingale Hospital, 19 Lisson Grove, London, N.W.1. Provides medical and surgical treatment for ladies of limited means and those of the professional classes.

CHARITABLE

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Forces Help Society and Lord Roberts Workshops, 122 Brompton Road, London, S.W.3. To help men of the Navy, Army and Air Force during their service in Her Majesty's Forces, and after their discharge.

Friend of the Clergy Corporation, 15 Henrietta Street, London, W.C.2. Provides permanent pensions for elderly widows and orphan maiden daughters of the clergy in straitened circumstances.

Friends of the Poor and Gentlefolk's Help, 42 Ebury Street, London, S.W.1. Assistance given to all classes in distress. Gentlefolk's Help provides Homes for elderly gentlepeople and gives pensions.

Gentlewomen's Work and Help Society (Inc.), 1 Ridgefield, King Street, Manchester, 2. Helps gentlewomen of all ages resident in all parts of the British Isles.

Greater London Fund for the Blind, 2 Wyndham Place, London, W.1. The central organisation in London raising money for societies and associations engaging in services to the civilian blind.

Guide Dogs for the Blind Association, 81 Piccadilly, London, W.1. The only organisation in Britain which trains and provides dogs to guide blind people.

Guild of Aid for Gentlepeople, 86A Eccleston Square, London, S.W.1. Gives help by regular allowances, and in emergencies, to men and women of gentle birth, too old or too infirm to support themselves.

Home of Rest for Horses, Westcroft Stables, Boreham Wood, Herts. To enable the poorer classes to procure rest and skilled treatment for their ponies and donkeys when such care is needed.

Homes of St. Barnabas, Dormans, Surrey. These homes are maintained by what fees the residents can afford, interest on invested capital from legacies, etc., and general subscriptions.

Hostel of God, 29 North Side, London, S.W.4. To provide a home where men and women in the last stage of illness, without home or friends to help them, may end their days in peace, carefully nursed.

Imperial Cancer Research Fund, Royal College of Surgeons of England, Lincoln's Inn Fields, London, W.C.2. A centre for research and information on cancer, and carries on continuous and systematic investigations.

Invalid Children's Aid Association, 4 Palace Gate, London, W.8. Helps thousands of sick children to health and happiness through 14 London Branches and seven Residential Homes.

Invalid Kitchens of London, 11 Ironmonger Lane, London, E.C.2. For providing invalid diet to gastric and diabetic cases ; convalescents from hospital and other cases nursed in their own homes.

John Groom's Crippleage, 37 Sekforde Street, London, E.C.1. Trains and employs crippled women and girls in high-class artificial flower making. Accommodation provided in homely hostels.

King Edward's Hospital Fund, 10 Old Jewry, London, E.C.2. Not directly affected by the National Health Service Act. It can assist new developments of great promise not included in Health Service.

King George's Fund for Sailors, 1 Chesham Street, London, S.W.1. The Central Fund for the Marine Benevolent Societies, which assist all seafarers, past and present, of the Royal Navy and Merchant Navy.

Law Association, 25 Queensmere Road, London, S.W.19. Financial relief for necessitous members and their families and dependent relatives of deceased members, and necessitous solicitors not members.

Lebanon Hospital for Mental and Nervous Disorders, Drayton House, Gordon Street, London, W.C.1. A voluntary international hospital, open to all in the Middle East who need its help.

London Association for the Blind, 88/90 Peckham Road, S.E.15. Training and employment in workshops ; homes and hostels ; self-contained flats for men and women. Benevolent and Pensions Fund and Blind Welfare generally.

London City Mission, 6 Eccleston Street, London, S.W.1. Maintains 200 missionaries in door-to-door visitations, etc. Mission Halls in many parts of London. Has holiday home for its own workers.

London Police Court Mission, 2 Hobart Place, London, S.W.1. Provides a home and a hostel for boys on probation, a similar hostel for girls on probation and a home for children who have been ill-treated or criminally assaulted.

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Ludhiana British Fellowship, 12 Queen Anne's Gate, London, S.W.1. Graduates serve throughout India and Pakistan. Some 300 students now training as doctors, nurses, dispensers, etc.

Methodist Homes for the Aged, 1 Central Buildings, London, S.W.1. Maintains 11 large Methodist Homes which are homes in the warmest and fullest sense of the word. Present accommodation is for 250 residents.

Methodist Missionary Society, 25 Marylebone Road, London, N.W.1. Founded 1786. For the work of world Evangelism through preaching, teaching and healing.

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Miss Sheppard's Annuitants' Homes, 12 Lansdowne Walk, London, W.11. To give a real home to gentlewomen in good health, aged 60 to 75 on entry, with small assured incomes.

Miss Smallwood's Society, Lancaster House, Malvern. Assists ladies in poor circumstances without distinction of creed, by monthly pensions. Has monthly pension list of over 390. Gives grants in deserving cases.

Mission to Lepers, 7 Bloomsbury Square, London, W.C.1. Has 117 centres for sufferers from leprosy and healthy children of leper parents. Provides Christian teaching at several public leprosy centres.

Mission to Seamen, 4 Buckingham Palace Gardens, London, S.W.1. Maintains 85 stations at home and overseas with port staff. Institutes and launches. All seamen welcomed.

Moravian Missions, 14 New Bridge Street, London, E.C.4. Oldest to heathen, first to Jews, first to send out medical missionaries, first to lepers.

Mothers' Clinics for Constructive Birth Control, 106 Whitfield Street, London, W.1. Founded to give gratis to poor married women information in the control of conception by medical women and nurse-midwives.

National Association of Boys Clubs, 17 Bedford Square, London, W.C.1. A voluntary organisation which helps boys to become decent men by means of the Club Method. Imaginative courses provided for adult leaders, helpers and boys.

National Association of Discharged Prisoners' Aid Societies (Inc.), 66 Eccleston Square, London, S.W.1. Promotes co-operation amongst certified D.P.A. Societies. Administers private gifts for special cases.

National Association for the Prevention of Tuberculosis, Tavistock House North, Tavistock Square, London, W.C.1. A voluntary body seeking to prevent and control tuberculosis by research, education and propaganda.

National Canine Defence League, 8 Clifford Street, London, W.1. Maintains animal clinics with full hospital service. Provides homes for unwanted dogs.

National Children's Home, Highbury Park, London, N.5. Helps children deprived of a normal home life. Forty branches. Over 3,000 girls and boys cared for and nearly 36,000 benefited.

National Institute for the Deaf, 105 Gower Street, London, W.C.1. To promote and encourage the prevention and mitigation of deafness and the better treatment, education, training and welfare of the deaf.

National Library for the Blind, 35 Gt. Smith Street, London, S.W.1. The library possesses 289,985 volumes in embossed type and is free to blind readers. 1,500 volumes issued daily by post.

National Society for Cancer Relief, 47 Victoria Street, London, S.W.1. Assists poor persons suffering from cancer and those needing nursing or other special facilities. Provides blankets, clothing, fuel for patients.

National Society for the Prevention of Cruelty to Children, Victory House, Leicester Square, London, W.C.2. Saves children from mental and physical ill-treatment and neglect.

People's Dispensary for Sick Animals, P.D.S.A. House, Clifford Street, London, W.1. Established to provide free treatment for sick and injured animals of the poor.

Poor Clergy Relief Corporation, 27 Medway Street, London, S.W.1. Makes grants to the clergy of the Church of England at home and abroad, also Wales, Scotland and Ireland, their widows and orphan daughters.

Professional Classes Aid Council, 20 Campden Hill Square, London, W.8. Relief of distress amongst professional classes and their dependants resulting from causes beyond individual control.

Queen Elizabeth's Training College for the Disabled, Leatherhead, Surrey. To train physically disabled persons for absorption into normal industry or to become self-supporting as home workers.

Reed's School, 32 Queen Victoria Street, London, E.C.4. Boarding school for fatherless children. Secondary Grammar School education.

Royal Agricultural Benevolent Institution, Vincent House, Vincent Square, London, S.W.1. The only national organisation for the relief of disabled and aged members of the farming community.

Royal Air Force Benevolent Fund, 67 Portland Place, London, W.1. Exists primarily to help those disabled while flying and the dependants of those killed.

Royal Association in Aid of the Deaf and Dumb, 55 Norfolk Square, London, W.2. Not in receipt of State aid. Ministers to the spiritual and material needs of the deaf and dumb.

Royal College of Surgeons of England, Lincoln's Inn Fields, London, W.C.2. One of the leading centres of surgical research and study Is expanding and increasing its programme of research and education.

Royal Hospital and Home for Incurables, West Hill, Putney, London, S.W.15. Dependent on voluntary support. 250 patients and pensioners from all parts of the U.K. Books welcomed for library.

Royal Humane Society, Watergate House, York Buildings, Adelphi, London, W.C.2. To award persons for gallantry in saving, and attempting to save, life from drowning, etc.

Royal Merchant Navy School, Bearwood, Wokingham, Berks. A school for the sons and daughters of merchant seamen deceased, or of seamen who through illness or infirmity have left the sea.

Royal National Institute for the Blind, 224 Gt. Portland Street, London, W.1. A voluntary organisation serving 81,000 blind of England and Wales, and the blind in many parts of the British Empire.

Royal Naval Benevolent Trust, High Street, Brompton, Chatham. The central benevolent organisation for men of the Royal Navy. Assists serving and ex-serving men of the R.N. and R.M. and their dependants.

Royal Normal College for the Blind, Rowton Castle, Nr. Shrewsbury, Shropshire. A selective school for boys and girls between the ages of 12 and 16 years. Training departments in music, piano tuning, typewriting.

Royal Sailors Rests, 31 Western Parade, Portsmouth. Provides food, beds, recreation for sailors when ashore in Portsmouth and Devonport. New buildings planned.

Royal Society for the Prevention of Cruelty to Animals, 105 Jermyn Street, St. James's Street, London, S.W.1. Works unceasingly for the encouragement of kindness to animals.

Sailors' Home and Red Ensign Club, Dock Street, London Docks, E.1. To provide seamen with a home and club bringing them into contact with those agencies calculated to advance their moral, temporal and spiritual welfare.

Salvation Army, 113 Queen Victoria Street, London, E.C.4. Preaches Christianity in Action from 20,000 centres in 89 countries and colonies. Has 26,747 officers and 102,607 unpaid officers.

Searchlight Cripples Workshops, Mount Pleasant, Newhaven, Sussex. A home and workshop for young men too badly crippled for acceptance by Ministry of Labour training establishments for the physically handicapped.

Shaftesbury Homes and Arethusa Training Ship, 164 Shaftesbury Avenue, London, W.C.2. A home and industrial training for homeless and fatherless children.

Shaftesbury Society, John Kirk House, 32 John Street, London, W.C.1. Renders Christian social services to poor and crippled children and their parents in the neediest areas of London.

Shipwrecked Fishermen and Mariners' Royal Benevolent Society, 16 Wilfred Street, London, S.W.1. Their object is to feed, clothe, assist and send home and replace the losses of shipwrecked fishermen.

Society for the Propagation of the Gospel, 15 Tufton Street, Westminster, S.W.1. Evangelistic, educational and medical missionary work both for our own people and non-Christian people in forty-eight overseas dioceses.

Soldiers', Sailors' and Airmen's Families Association, 23 Queen Anne's Gate, London, S.W.1. A nation-wide voluntary organisation to give advice to the families of service and ex-service men and women.

S.O.S. Society, 24 Ashburn Place, London, S.W.7. Homes for old people who can no longer fend for themselves, and hostels for men and boys who are temporarily homeless or whose lives have gone adrift through misfortune.

Spurgeon's Orphan Homes, 22 Haddon House, Park Road, Birchington, Kent. For fatherless or motherless children. Unhealthy, deformed and imbecile children ineligible. Age of admission 4-11 years.

St. Dunstan's, 1 South Audley Street, London, W.1. Is responsible for the re-education and training, settlement in homes and occupations and the lifelong welfare of blinded service men and women.

St. Loyes College for the Training and Rehabilitation of the Disabled, Exeter. A voluntary organisation providing special training for physically disabled persons of both sexes from the age of 14 upwards.

Star and Garter Home, Richmond, Surrey. Provides a permanent home and gives skilled medical and nursing attention to paralysed and otherwise totally disabled men of H.M. Forces.

United Society for Christian Literature, 4 Bouverie Street, London, E.C.4. Oldest inter-denominational body of its kind. Its income is used in Christian publication.

Wireless for the Bedridden Society, 55A Welbeck Street, London, W.1. Aims to provide wireless facilities for those who are bedridden or house-bound and are too poor to obtain them for themselves.

DECLARATORY JUDGMENTS—*continued from p.* 841

statutory provisions." The jurisdiction is not substantially affected by the Crown Proceedings Act, 1947.

In a sense the power, under Ord. 54A, r. 1, of determining on an originating summons a question of construction arising under a deed, will or other instrument is a declaratory power. In fact the order expressly authorises the court—and it may be any division of the High Court—at its discretion to declare the rights of the persons interested. This power is not strictly relevant where the issue is not the construction of a document, but the question whether in the events which have happened an undisputed contract is still binding on the parties. The more general jurisdiction under Ord. 25, r. 5, is in point then, and its usefulness is demonstrated by *Société Maritime et Commerciale* v. *Venus Steam Shipping Co., Ltd.* (1904), 9 Com. Cas. 289, where the plaintiffs obtained a prompt declaration that in the light of certain happenings they were not bound to load a ship in compliance with their contract.

Another kind of declaration which a litigant may sometimes seek, even without joining any other claim, is a declaration of the status of the applicant. For example, s. 17 of the Matrimonial Causes Act, 1950, authorises decrees declaring the legitimacy of a petitioner or the legitimation of the petitioner or his ancestor. But this is a watertight compartment of jurisdiction, not extended, as Willmer, J., held in *Knowles* v. *A.-G.* [1951] P. 34, by the terms of Ord. 25, r. 5. On the other hand, that rule is imported by r. 80 of the Matrimonial Causes Rules, 1950, into the general practice and procedure of the Divorce Division. Hence, again relying on the wide interpretation of the rule in *Guaranty Trust Co.* v. *Hannay*, the Court of Appeal in *Har-Shefi* v. *Har-Shefi* [1953] 2 W.L.R. 690, the petitioner was allowed to proceed with a petition asking simply for a declaration either that her marriage had been validly dissolved by a Jewish bill of divorcement delivered to her by the Beth Din in London, or alternatively that she was no longer married to the respondent. The judgments approve *Igra* v. *Igra* [1951] P. 404, a jactitation suit in which, though an injunction was refused, a declaration was made.

The third and fourth Pickford heads deal with restrictive factors. The third is pointedly illustrated by *Maerkle and Another* v. *British & Continental Fur Co., Ltd.* [1954] 1 W.L.R. 1242; *ante*, p. 588, of which we shall describe the facts and decision in a moment. Meanwhile, it is to be observed that the principle that the party asking the court to make a declaration must have an interest in the transaction is closely allied to the much broader rule that the English courts will not decide hypothetical questions. They will pronounce on matters of status, which are in a sense general questions, and in that function take on in some degree the guise of consultants. But mere general advice on the position of parties in certain eventualities which have not yet occurred they will not give. Sellars, J., in *W. J. Webster, Ltd.* v. *Customs & Excise Commissioners* (*The Times*, 24th July, 1954) is reported as indicating that, though it might be unsatisfactory that there was no convenient procedure whereby a trader could ascertain in advance what was his legal position with regard to the purchase tax on articles which he proposed to buy, a similar situation confronted every citizen when he had to determine his course of action within the law. In that case the plaintiffs had received an invitation to supply certain picture frames, but no contract was in existence. Since purchase tax is imposed at the point where there is a chargeable purchase, there was no real-life basis for the declaration, for which the plaintiffs sued, of the exemption of the articles in question from the tax. This appears to distinguish *Webster's* from *Dyson's*, the other taxation case. The objection to the jurisdiction in the *Webster* case was raised by the defence, but it is to be noted that their acquiescence would not have empowered the court to decide the matter (*Sun Life Assurance Co. of Canada* v. *Jervis* [1944] A.C. 111). Even a "friendly" action must be based on real facts.

The merely academic quality of a question put to the court may arise in many ways. In *Howard* v. *Pickford Tool Co., Ltd.* [1951] 1 K.B. 417, the claim as considered by the Court of Appeal was for a declaration that by reason of the defendants' conduct, the plaintiff was no longer bound by his contract of service, in other words, that they had repudiated that contract. But the position was that the plaintiff was in fact still acting as managing director under the agreement. He had not accepted the alleged repudiation, and this caused the question as to which the court was asked to declare to rest on a pure hypothesis. The court could not decide whether, if the plaintiff had purported to accept a repudiation, the conduct complained of would have amounted to a repudiation at all.

The remaining restriction arises from the fact that the declaratory jurisdiction is discretionary in the court. *Maerkle and Another* v. *British & Continental Fur Co., Ltd., supra*, shows this forcefully. The action was for an account in respect of lambskins alleged to have been bought by the defendants as agents for the plaintiffs, who carried on business at Leipzig in 1939, and for damages. The Court of Appeal agreed with Wynn Parry, J., that the subject matter of the claim had become vested, under the legislation relating to trading with the enemy, in the Custodian of Enemy Property, so that the plaintiffs could not maintain the action for an account or damages, and that the statement of claim should be to that extent struck out. There was also, however, a claim for a declaration. In support of the contention that that claim should be allowed to proceed counsel for the plaintiffs relied on *Guaranty Trust Co.* v. *Hannay*. Jenkins, L.J., in the Court of Appeal, accepted that that case was authority for the proposition that in some cases a declaration may be made although the party seeking it has no cause of action. But he added that it by no means follows that in every case where a party has no cause of action he can maintain a claim for a declaration. If the whole of the plaintiffs' rights in the lambskins had passed to the custodian, the latter might, or might not, see fit to litigate, compound or compromise the very claims which the plaintiffs now sought to assert. His lordship did not think it right to allow the action to proceed for the purpose of obtaining declaratory relief in an action to which the custodian was not a party. The reason for withholding the court's discretion here merges into the third of our Pickford heads.

There appeared to be a suggestion at one stage of the *Maerkle* proceedings that the declarations might, if made, be used to assist the plaintiffs in foreign proceedings, although any intention to take any such proceedings was disclaimed on behalf of the plaintiffs. Certainly in *Knowles* v. *A.-G.*, *supra*, the petitioner's interest in the subject-matter of the declaration (of the legitimation of his uncle) which he sought was taken as proceeding from his anticipated exclusion, unless he could obtain the declaration, from prosecuting a suit in the French courts. Willmer, J., appears to have approved that motive, but it must be remembered that he was dealing with a matter of status. Bankes, L.J., on a commercial matter, showed a different approach. He characterised the claim in *Guaranty Trust Co.* v. *Hannay* as "merely a request to the court to supply . . . evidence in a convenient form

for use in the American action, and to supply it against the will of the appellants and possibly at their expense." It does not seem material where the principal proceedings are brought or whether they have in fact been commenced. "I think," said Pickford, L.J., "that a declaration that a person is not liable in an existing or possible action is one that will hardly ever be made, but that in practically every case the person asking it will be left to set up his defence in the action when it is brought."

It remains to refer to the use of the jurisdiction by declaratory order in cases where an inferior tribunal has already decided or purported to decide the issue. Such circumstances call into play the possibility of a prerogative order of certiorari. But certiorari, as Denning, L.J., has said, is hedged around by limitations and may not be available. In that event the courts are not powerless. It is now established that they can, on cause being shown, intervene by way of injunction, or as may be more appropriate by declaration (*Barnard* v. *National Dock Labour Board* [1953] 2 Q.B. 18). But here again an important limitation is to be observed. The court will not, under the guise of a declaratory order, entertain an appeal from an inferior tribunal on the substance of a matter in which no appeal is conferred by statute if the order is correct upon its face (cf. *Healey* v. *Minister of Health*, *ante*, p. 819); nor will the High Court declare upon a question which by statute has been expressly left for the determination of a court of summary jurisdiction (*Barraclough* v. *Brown* [1897] A.C. 615). J. F. J.

ILLEGITIMATE CHILDREN—*continued from p.* 840

no specific power apparently exists where the order has been made pursuant to the Children Act, 1948, s. 26. However, it would seem that, despite s. 26 (3) and (4), the general powers of variation conferred by the Affiliation Orders Act, 1914, s. 3, and of variation and revival under the Magistrates' Courts Act, 1952, s. 53, would apply. The mother may also, it seems, apply to revive an order under s. 26 by virtue of the Children and Young Persons Act, 1933, s. 88 (4).

Evidence. The evidence of the mother must be given in court from the witness box in all proceedings, by whomsoever brought, for an affiliation order (*R.* v. *Armitage* (1872), L.R. 7 Q.B. 773). If she dies before she has given evidence or is too ill to come to court or is of insufficient mental capacity to understand the oath no order can be made. Her evidence cannot be received in writing under the Evidence Act, 1938, for, in addition to the rule just given, she is "a person interested" whose testimony is inadmissible under that Act. When she is ill, it has been suggested that the place where she lies ill should be designated as an occasional court house in accordance with the Magistrates' Courts Act, 1952, s. 123; this power so to designate does not apply to licensed premises or in boroughs. Where the mother has already given evidence and a second application is being made between the same parties, it seems that her deposition at the first hearing is admissible at the second hearing, despite her death or illness (Phipson's Manual of Evidence, 7th ed., p. 180). A deposition given at the court of first instance may also be admissible on appeal (see Lushington, *op. cit.*, p. 84).

Corroboration of the mother's evidence is always required and the putative father may himself be called by the complainant to provide this (*R.* v. *Flavell* (1884), 14 Q.B.D. 364). The mother may herself prove letters containing admissions from the defendant and her evidence as to the authorship of these letters need not be corroborated (*Jeffery* v. *Johnson* [1952] 2 Q.B. 8; 96 SOL. J. 131, overruling earlier contrary decisions). The letters themselves or admissions by the defendant out of court or, *semble*, in court (see 114 J.P. News. 62) may be corroboration. So may an association between the mother and the defendant on terms of intimacy and affection, provided that she was not associating with any other man at the probable time of conception; opportunity without evidence of affection or other material evidence is not sufficient (*Moore* v. *Hewitt* [1947] K.B. 831; *Burbury* v. *Jackson* [1917] 1 K.B. 16). Lies told by the defendant may or may not be corroboration (*Jones* v. *Thomas* [1934] 1 K.B. 323; *Credland* v. *Knowler* (1951), 35 Cr. App. R. 48, where it was said that a lie can so amount if it is of such a nature and made in such circumstances as to lead to an inference in support of the complainant's evidence or if it gives to a proved opportunity a different complexion from what that opportunity would have borne had no such lie been told).

There are various cases in the books as to whether certain acts or words amounted to corroboration, but it should be remembered that many of these were decisions on a certain set of facts and it is unlikely that exactly the same set of facts would arise again. In particular, a conviction of the defendant for carnal knowledge of the mother may now no longer be corroboration of her evidence, though his plea of guilty would be (*Hollington* v. *Hewthorn & Co.* [1943] K.B. 587; 87 SOL. J. 247). Silence when taxed with paternity is corroboration only where there are circumstances which render it more reasonably likely that a man would answer the charge against him than that he would not (*Wiedemann* v. *Walpole* [1891] 2 Q.B. 534; *Quirk* v. *Thomas* [1916] 1 K.B. 516).

If it be shown that another man might equally be the father, then the case against the defendant will fail. English law does not follow the practice in some Scandinavian countries of apportioning liability between all the contenders for paternity. If a child is born during the subsistence of a marriage or within nine months of its termination it will be presumed legitimate unless evidence of the husband's non-access to his wife (the mother) is given; he or she may now give the evidence though it tends to bastardise the child (Matrimonial Causes Act, 1940, s. 32). A child is presumed illegitimate, however, if born more than nine months after pronouncement of a judicial separation or magistrates' separation order, *aliter* if it is a maintenance order (i.e., does not contain a non-cohabitation clause) or there is only a separation agreement (*Ettenfield* v. *Ettenfield* [1940] P. 96; 84 SOL. J. 59). A child born before the pronouncement of a decree absolute of divorce is presumed legitimate (*Evans* v. *Evans and Blyth* [1904] P. 378).

The normal period of gestation is 270 to 280 days, but longer periods have been accepted; the cases were reviewed by the House of Lords in *Preston-Jones* v. *Preston-Jones* [1951] A.C. 391; 95 SOL. J. 13.

The evidence of a child who does not understand the meaning of an oath is not admissible in affiliation proceedings, though it would be proper for the court to adjourn for the child to be instructed (*Baker* v. *Rabbetts*, *The Times*, 30th April, 1954).

Blood tests can be taken only with the consent of the parties. After they have been taken and the results are submitted to the court, sworn evidence should be taken from the mother and the defendant that they themselves and the child were the persons who actually presented themselves for

a blood sample to be taken. A test shows only that a man cannot be the father; if blood of his group is in the child, that shows that he and any other man in the same group—and such men may be numbered in millions—could be the father.

Nothing will be said as to enforcing affiliation orders, as that is a matter usually dealt with by the magistrates' clerk.

An order continues in force although the mother marries after it has been made; see below as to adoption. Sometimes an agreement between the parties is made to avoid the publicity of court proceedings or to enable the mother to receive more than thirty shillings per week. Such an agreement is enforceable in the county court only at the suit of the mother and terminates unless otherwise expressed on the mother's death (*James* v. *Morgan* [1909] 1 K.B. 564). It does not bar proceedings for an affiliation order, even though it provides that no such proceedings be taken (*Follit* v. *Koetzow* (1860), 24 J.P. 612).

Second application and appeal. Where an application is dismissed on the merits, a second or subsequent one may be made provided each complaint is lodged within the time limit; there should, however, be some fresh evidence, as justices should not be asked to reconsider their or their colleagues' previous decision without any more evidence (*R.* v. *Sunderland Justices*; *ex parte Hodgkinson* [1945] K.B. 502; 89 SOL. J. 436). By the Magistrates' Courts Act, 1952, s. 83 (4), an appeal lies to quarter sessions against an affiliation order or the refusal to make such an order or against the revocation, revival or variation of such an order, but there is no appeal (save as to the High Court on a point of law) in enforcement proceedings. Quarter sessions may state a case for the opinion of the High Court, or either party, abandoning the right of appeal to quarter sessions, may appeal by case stated to the High Court. Appeal lies in either case from the High Court to the Court of Appeal and, with leave, to the House of Lords. Notice of appeal from a magistrates' court should be given within fourteen days of the decision but, on an appeal to quarter sessions, this time may, by s. 84 (3), be extended. It seems that, if quarter sessions quash an affiliation order on the merits (and not on a technicality), the mother cannot make a further application to the magistrates with fresh evidence (*R.* v. *Howard*; *ex parte Da Costa* [1938] 2 K.B. 544; 82 SOL. J. 477).

Miscellaneous points. Legal aid is, at the time of writing, not obtainable by either party in magistrates' courts or at quarter sessions but may be obtained under the Legal Aid and Advice Act in High Court proceedings. Sometimes the National Assistance Board will help a woman by instructing a solicitor for her or the court will pay for one out of the poor box.

Costs may be awarded to the unsuccessful as well as to the successful party (Magistrates' Courts Act, 1952, s. 55).

Where the putative father was under fourteen at the time of conception it is not clear whether an order can be made, because a boy under fourteen cannot be convicted of rape or carnal knowledge (*R.* v. *Waite* [1892] 2 Q.B. 600). Would this rule operate to prevent an order being made when it was quite plain that the boy was the father? It would certainly be an absurd result if it did and would lead to grave injustices for the mother, for even the criminal rule allows convictions for lesser offences, but the mother could never obtain any kind of order. It might be that the High Court, rather than allow such an injustice, would hold that the rule applies only in criminal proceedings as, for all one knows, it may originally have been introduced *in favorem vitae*. However, if the boy denied paternity, strong evidence of his sexual potency would be required.

There seems to be no decision on the point whether affiliation proceedings for a child born as the result of a rape must be stayed till the felony has been prosecuted or a reasonable excuse for non-prosecution shown; this rule, if it applies at all, would apply only to proceedings by the mother and not to those by a local authority or custodian. Carnal knowledge of girls who have attained the age of thirteen but are under sixteen is a misdemeanour only.

Variation and revocation. The Poor Law Amendment Act, 1844, s. 5, allows payments under an order to be made to any person having custody of the child if the mother has died or is of unsound mind or in prison, and the Affiliation Orders Act, 1914, s. 3, allows such an order to be made or varied on the application of any person having the custody of the child legally or by any arrangement approved by the court so as to provide for the payments to be made to the custodian; *quaere* whether this allows the custodian himself to apply at any time for an affiliation order (see Lushington, *op. cit.*, p. 106). The Magistrates' Courts Act, 1952, s. 53, allows a magistrates' court to vary, revive or revoke an order for the periodical payment of money and by the Magistrates' Courts Rules, 1952, r. 34, these proceedings may be heard, with the consent of the court which made the order, in some other court. Section 53 is useful not only to vary the rate of payment but also to revoke the order for payment altogether when evidence comes to light that the defendant is not the father. The adjudication of paternity cannot be revoked under s. 53 but only, it seems, by certiorari (if the time for appealing has expired), but most men, presumably, would be content if the payments were reduced to one penny per year and the arrears remitted under s. 76.

Scotland, foreigners, etc. The position as to mothers and fathers in Scotland and Northern Ireland is now regulated by the Maintenance Orders Act, 1950 (see 95 SOL. J. 35). By s. 3 (1) a man in Scotland or Northern Ireland may be summoned to an English court having jurisdiction where the mother resides if an act of intercourse which may have resulted in the birth of the child took place anywhere in England. By s. 3 (2) a mother residing in Scotland or Northern Ireland may apply for an affiliation order in the English court in whose area the father resides. By s. 3 (3) an English court which has made an affiliation order may vary, revive or revoke it in proceedings by or against a person residing in Scotland or Northern Ireland. "England," in this paragraph, includes Wales but not the Channel Islands or the Isle of Man. Part II of the Act relates to the registration, enforcement and variation of affiliation orders made before or after the Act and affiliation orders may be enforced against men in Scotland and Northern Ireland under it. This procedure for variation and enforcement of wife maintenance orders is described in Oyez Practice Note No. 30, "Summary Maintenance and Guardianship Orders," and that for affiliation orders is much the same.

By s. 27 (2) of the same Act an English court has jurisdiction to make an affiliation order notwithstanding that the party is domiciled in Scotland or Northern Ireland and that the child was born there. Otherwise, a child born outside England, Wales, Scotland or Northern Ireland of a mother domiciled outside those countries cannot be the subject of an affiliation order here (*R.* v. *Wilson*; *ex parte Pereira* [1953] 1 Q.B. 59; 96 SOL. J. 729), but an order may be made for a child born abroad to a mother domiciled here (*R.* v. *Humphrys*; *ex parte Ward* [1914] 3 K.B. 1237).

Where the defendant is in the Isle of Man or the Channel Islands it seems that no process to apply for an order can be served on him, but once an order has been properly made a warrant of commitment but not, *semble*, a warrant for arrest to bring the defendant before the court may be executed in the Channel Islands; in the Isle of Man both kinds of warrant may be executed and there are special provisions as to making orders.

If the defendant is in Eire or in any other country, whether part of the Empire or not, no affiliation order can be made because no process can be served on him till he comes here. Nor can an order, properly made, be enforced against a person outside the British Isles (see Stone's Justices' Manual, 86th ed., p. 134, as to warrants in Eire).

The Maintenance Orders (Facilities for Enforcement) Act, 1920, does not apply to affiliation proceedings. The Service departments will, in fact, continue payments under an order in respect of a British serviceman who later goes abroad.

The Visiting Forces Act, 1952, is now in operation and American, Canadian and other non-British service men in England may be proceeded against for affiliation orders in the same way as if they were British civilians (see Home Office Circular 122/1954, dated 9th June, 1954).

Adoption

Many illegitimate children are adopted, though it is the practice now of some adoption societies to try to persuade the mother to bring up the child herself. The procedure for an adoption is fully explained in Oyez Practice Note No. 3, "Adoption of Children," 3rd ed., by Mr. J. F. Josling, while readers who are interested in its wider social aspects are advised to read Margaret Kornitzer's "Child Adoption in the Modern World" (Putnam). Once an adoption order has been made, the child is deemed to be the legitimate child of the adopters, in effect, and takes on intestacy as their issue and not as his mother's issue. Any reference in a will or other disposition made after the adoption order to children includes the adopted child (see further, Adoption Act, 1950, s. 13). Where an affiliation order or agreement is in force in respect of a child for whom an adoption order was made after 31st December, 1949, the affiliation order and agreement cease to have effect on the adoption unless the child's mother, being a single woman, adopts him; in the latter case the affiliation order or agreement remains in force until she marries. If the adoption order was made prior to 1st January, 1950, the affiliation order or agreement have not automatically ceased, but, so far as an affiliation order is concerned, the putative father would have good grounds for asking the court for its revocation.

Where a married couple are desirous of adopting, it should be remembered that an adoption order cannot be made unless the child has been continuously in the care and possession of the applicants for three consecutive months immediately preceding the date of the order and the appropriate local authority have been notified of the intention to adopt at least three months before the order.

Many married couples who take children as foster-parents or with a view to adoption must worry at the thought of the natural parents suddenly deciding to take the child away before it can be legally adopted. It is true that the mother of an illegitimate child can demand her child from foster-parents or would-be adopters by habeas corpus unless the child has been committed to the care of a fit person by a court under the Children and Young Persons Act, 1933, or parental rights have been assumed by the local authority under the Children Act, 1948, s. 2. Even if these last two exceptions do not apply, however, the Custody of Children Act, 1891, may still be invoked by the custodians. By s. 1 the High Court may decline to grant habeas corpus in the parent's favour if the latter has abandoned or deserted the child or otherwise so conducted himself that the court should refuse to enforce his right to its custody. By s. 2, if the child is being brought up by a person other than its parent or is boarded out by the local authority, the High Court, on ordering its production by habeas corpus, can order the parent to pay all or part of the costs incurred in bringing it up. By s. 3, where a parent has abandoned or deserted his child or allowed it to be brought up by another person or the local authority (*semble*, including through foster-parents) for such a length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties, the court will not order the child's delivery to him unless satisfied, having regard to the welfare of the child, that the parent is a fit person to have the custody. A recent case is *Re A.B.* [1954] 3 W.L.R. 1, *ante*, p. 391; the Act of 1891 was not cited in the judgments but there were special obligations as to returning the child to its parent under the Children Act, 1948, s. 1 (3).

As stated at the start of this article, only some aspects of the law relating to illegitimate children have been considered and limitations of space have prevented the aspects considered above from being fully covered in many instances. The outlines given will nevertheless show that the illegitimate child and his mother still labour under various disabilities and, as this is the Charities number of this Journal, will perhaps help to persuade the reader to support the various children's societies and other bodies which do such excellent work to help the unfortunate.

G. S. W.

LAWLESS CHARITY

If by law one means a body of rules recognised as binding on the community, it comes pretty close to being a contradiction in terms to speak of the "law of charities." To attempt to codify or canalise the operations of charity is another example of that misty well meaning English way of seeking to clutch the inapprehensible. The same spirit produced, for the astonishment and bewilderment of foreign jurists, the law of equity, which was to be a juster sort of justice, emancipated from the tyranny of technicalities, and, to everybody's surprise, eventually came to be popularly regarded as the epitome of "trickery, evasion, procrastination, spoliation, botheration under false pretences of all sorts." It had to be broken in to double harness with the common law before it achieved rehabilitation. It had to stop galloping off wildly in pursuit of the unattainable, hunting the Snark; of equity it might be said, as the old Court of Chancery lost itself in ever more fantastic byways, that—

> "They sought it with thimbles; they sought it with care;
> They pursued it with forks and hope;
> They threatened its life with a railway share;
> They charmed it with smiles and soap."

After all, the Barrister's Dream in Fit the Sixth is not so very far removed from Chapter I of Bleak House and the goings on in the old Hall of Lincoln's Inn in which the Lord High Chancellor sat in the midst of the fog in his High Court of Chancery.

The same considerations apply to the law of charities, entangled, like the agonised Laocoon, amid the serpentine convolutions of the old Chancery practice and equitable development. Only there are even more obvious reasons why charity is yet more intractable in the matter of legal control than equity. Charities in the plural cannot really be treated as unrelated to the conception of charity (in the fundamental sense of *caritas*) from which they spring. The branches and their fruit, however widely they may spread, still spring from the tap-root of the tree. Separate them and the branches wither and the fruit rots.

Now, justice is a plain enough conception, however difficult it may sometimes be to render it in particular circumstances. To do justice is to give every man his due. But justice has nothing whatever to do with charity. People sometimes still talk of giving to the " deserving poor," a relic of Victorian phraseology. But giving to the deserving poor is giving them what is their due: that is not charity at all; that is justice. Charity means giving to the undeserving poor because you love them as human beings. But love and charity are things that cannot be demanded. A man is in a poor way and a weak state of mind if he demands the love of a woman because he deserves it. For that reason Green Sleeves, for all the haunting charm of its air, is one of the most outrageous love songs ever penned. Love is an essential to life itself, but it cannot be enforced by injunction.

In the same way, the framers of the Welfare State are right in believing that the poor should be relieved, deserving or undeserving. They are wrong in believing that such indiscriminate relief can for long be enforced by process of law. They are wrong, in particular, in treating as a matter of justice that which is essentially a matter of charity. People are not charitable in the abstract, for charity is essentially personal. If they are going to do good to the undeserving, it must be to the undeserving they know. Sooner or later, when they become convinced that a totalitarian cornucopia, filled to overflowing at their expense and to the diminishing of their resources, is raining benefits on the just and the unjust alike, they will demand means tests for recipients and certificates of good character and guarantees of good resolutions, and then there'll be trouble, for nothing is ever so bitterly resented as the withdrawal of a service which, though always a matter of grace, has come to be taken as a matter of course. There is also the corresponding danger that, when that day comes, the mood of the erstwhile involuntary benefactors will be such as might be expressed in the words of the old Scots judge trying the case of a person he disliked particularly: " He shall have justice, but it shall be bare justice."

Boyle's Practical Treatise on the Law of Charities, published in 1837, is now little referred to, which is a pity, because it has a very interesting opening chapter on the rise of charities in England, by which, of course, the author meant regulated charities. These, he begins by noting, are little found in primitive times, for " as a Kingdom is rude so it is hospitable, and in such a state of society private liberality is more than sufficient to answer all the calls that can be made upon it." He then goes on to enumerate the various factors which, as it were, set the scene for the ultimate appearance of the law of charities as a recognisable body of law in England. From the middle of the reign of Edward III there were the statutes designed to regulate and keep down wages, a counterweight to the effects of the scarcity of labour resulting from the catastrophe of the Black Death. " Thus," says the author, " fettered as were the lower classes in their endeavours after an honest independence, restricted from carrying their labour to the highest market . . . many . . . preferred a life of wandering to one of constant and ill-recompensed toil." Then there were the men demobilised from the great armies collected from the French wars " with habits unfitted for regular industry." By the end of the reign, the country was infested with " staff strikers " (no doubt the contemporary equivalent of the cosh boy) and sturdy rogues.

But, says the author, what most of all tended to keep alive this unsettled spirit was the ease with which the wants of the wanderers could be supplied at the numerous monasteries and religious houses scattered over the kingdom. When the suppression of these communities came under Henry VIII, " as institutions of a monastic description had tended so much to foster habits of idleness and dissipation among the people, the sudden contraction of the channel through which the wants engendered by those habits were supplied could not but be proportionately felt."

The author deserves to be quoted fairly because his point of view is perfectly sensible. He was an early Victorian of the industrial era who believed in thrift and industry and application and all the solid qualities and practices that lead to money in the bank and prosperity. And there are plenty of perfectly sensible people who think like him still. That is one side of life and a perfectly just side, too. But there is another side of life (incredible as it always seems to the rigidly just and sensible) and that is the side with which charity is concerned. The monasteries knew quite a lot about charity because, when they were fulfilling their proper function, they were the power-houses of the religion which had given to the world the paradoxical trinity of virtues—faith and hope and, the greatest, charity. Accordingly the monks would not have been in the least abashed at the reproach of sustaining the undeserving: their Master had never made a point of mixing with the deserving of His day. Had some abbot foreseen the consequences of the suppression of these houses, well might he have exclaimed:

> " O drunkards in my cellar, boys in my apple tree,
> The world grows stern and strange and new
> And wise men shall govern you
> And you shall weep for me."

When that light went out, that communal warmth which, within its orbit, created a state of welfare, without the enormous top-heavy mechanical structure of a Welfare State, a great deal was lost to the world for which the world has been blindly and fumblingly groping ever since. It provided for something which men leave out of account at their peril. Nor does one need a supernatural view of life to see it.

Do you remember, in John Steinbeck's " Cannery Row," Mack and the boys, the idlers and loafers living happily and freely by their wits in the middle of the little town in a converted fish meal storehouse known locally as the Palace Flophouse Grill? Read on and see how it fits in: " Mack and the boys too, spinning in their orbits. They are the Virtues, the Graces, the Beauties of the hurried mangled craziness of Monteray and the cosmic Monteray where men in fear and hunger destroy their stomachs in the fight to secure certain food, where men hungering for love destroy everything loveable about them. Mack and the boys are the Beauties, the Virtues, the Graces. In the world ruled by tigers with ulcers, rutted by strictured bulls, scavenged by blind jackalls, Mack and the boys dine delicately with the tigers, fondle the frantic heifers and wrap up the crumbs to feed the sea-gulls of Cannery Row. What can it profit a man to gain the whole world and to come to his property with a

gastric ulcer, a blown prostate and bifocals? Mack and the boys avoid the trap, walk around the poison, step over the noose, while a generation of trapped, poisoned and trussed-up men scream at them and call them no-goods, come-to-bad-ends, blots-on-the-town, thieves, rascals, bums. Our Father who art in nature, who has given the gift of survival to the coyote, the common brown rat, the English sparrow, the house fly and the moth, must have a great and overwhelming love for no-goods and blots-on-the-town and bums and Mack and the boys. Virtues and graces and laziness and zest. Our Father who art in nature."

Mack and the boys turn up in every age. After all, wasn't Gauguin one of them? The men who framed the Statute of Labourers, the Lincoln's Inn lawyer of 1837, join hands with the men of business to-day to condemn them, and in the eye of the law and of strict justice they were and are right, for law and order are the framework of society. But there is more to life than being right, more than following rectitude. Justice and prudence and fortitude and temperance are great virtues, but they do not carry a man the whole way. It is charity that reconciles him with life, through a lawless benevolence that makes him love the chance man next to him, not because he is deserving, but because he is there.

RICHARD ROE.

TALKING "SHOP"

December, 1954.

WEDNESDAY, 1ST

Reading this journal week by week, as even contributors may do, one might suppose that the average solicitor—that waxwork model of the genus reasonable man, man on the bus and man in the street—daily and effortlessly dispatches (in the lethal rather than the postal sense) a veritable host of legal problems. Was he not in years gone by required to answer fifteen questions on the law in two hours, and that without the aid of a single text-book? And then to repeat this *tour de force* several times upon a variety of subjects to the satisfaction of the board of examiners? Well then, with a working day of, say, eight hours and plenty of text-books and a shorthand typist to take it all down and some years of added experience since he qualified to practise, and bearing in mind that he can't be proved wrong until the question has been decided by the court, but allowing time off for lunch—reviewing all these matters impartially and arithmetically as best we can, it should not surprise us that he makes short work of the whole business.

It is pleasant to picture him sitting at his desk, bringing order out of chaos and sending those problems flying back wherever they belong. Instinctively he adopts the same method as boring old Rumbold and answers the easy questions first. At the question whether or not that gift to "ten blind girls, Tottenham residents if possible" was charitable, I cannot imagine his boggling for an instant. See *In re Lewis deceased, Public Trustee* v. *Allen & Others*, *ante*, p. 748. Moving on rapidly, he should not find it difficult to decide (for Danckwerts, J., "felt no doubt whatever") that the publication of substantially the whole of a certain work in one issue of a weekly periodical with paper covers is publication in volume form. See *Jonathan Cape, Ltd.* v. *Consolidated Press, Ltd.*, *ante*, p. 750. And so on, to decide whether or not premises are an agricultural holding when 65 per cent. of the turnover of the business comes from the sale of cut flowers, pot-plants, shrubs and wreaths, and the remainder from the sale of seed potatoes, fertilisers and horticultural sundries. See *Monson* v. *Bound*, *ante*, p. 751. After he has pottered around and shot a few sitting fowl of this feather, we cannot blame him if he looks further afield and, reaching for the ball ammunition of *ultra vires* and public policy, looses off a few rounds at the Birmingham Corporation's free-travel scheme for the elderly and indigent. See *Prescott* v. *Birmingham Corporation*, *ante*, p. 748.

Of course, as we all know, things are quite otherwise, and perhaps it is just as well for us that they are. We may count ourselves fortunate that the average solicitor's average problem is largely compounded of facts, elusive as they may be, with only here and there a *scintilla juris*. Indeed the bird of pure law is such a *rara avis*—if we ignore for this purpose the Rent Acts and a few other such horrid statutes—that I, for one, am prepared to give it a modest welcome when not too busy. I must admit that this is perhaps an idiosyncrasy. On those few occasions that I have felt obliged to raise some question of law with others of my calling—apologising the meanwhile for such pedantry—they have left me in no doubt that the subject was markedly distasteful.

THURSDAY, 2ND

According to an advertisement that I have just been reading for Smirnoff Vodka, "The Island Race are among the world's most discerning drinkers. They are, however, notably conservative in their tastes, preferring to stick to what they know than experiment with alien beverages of doubtful potency." Following the practice of parliamentary draftsmen I have only to substitute "Solicitors" for "The Island Race" and "thinkers" for "drinkers" and there are my comments of yesterday in a nutshell. And when one considers the varying shades of opinion that may supervene—from solicitor to junior counsel and then to silk and on from the court of first instance through the Court of Appeal to the House of Lords—the wonder is that we ever venture to sip these alien beverages at all. For those, however, who are prepared to take a heady draught, there is an equally potent satisfaction when it turns out that we were right after all.

FRIDAY, 3RD

I am shown an envelope received through the post and endorsed "N.B. In the enclosed letter, for 'Dear Sirs,' please read 'Gentlemen'." One cannot be too careful.

* * * * *

Experiments with the office dictaphone. Hearing one's own voice played back by the machine is a disheartening experience. But once over this shock, we get along famously and plough through several reels of instructions to counsel. Unfortunately the pointer turns out to have been at neutral part of the time so that some of the most eloquent passages are lost to posterity. And we are in happy ignorance of the fact that we are putting the whole of this floor of the office *hors de combat* with resounding "replays," having yet to discover that the thing does not have to play *fortissimo* all the time. One of the luckless sufferers declares that he took it for a loud-speaker van touring round and round this office block, but was puzzled to hear it drawing counsel's attention to this and that.

WEEK-END REFLECTIONS

Another discovery—that "conveyancing" in this office (or should I say the branch office that I seem to run at home) comprises the whole field of ecclesiastical and substantive

(and *semble*) formal marriage law. The week-end subject under review is, as it happens, the disestablishment of the Church in Wales by the Welsh Church Act, 1914, and the Welsh Church (Temporalities) Act, 1919. The latter Act, by the way, is said to have been drafted in twelve hours, from 4.30 p.m. to 4.30 a.m. ("Memories" by Archbishop Edwards, pp. 302-3), so perhaps it is not surprising that we are in doubt about certain of its effects. But the main difficulty is to keep one's mind on the subject at all. Volume 7 of Halsbury's Statutes (Second Edition) (Title Ecclesiastical Law) is perhaps the most fascinating of the whole series in this remarkable work; yet I dare say that in general practice and away from cathedral precincts it is seldom opened. Time-wasters like myself are strongly advised to put a slip of paper into the book at the right page and to resist the temptation to browse elsewhere. For a chance opening at the wrong page carries one back to the great historical struggles between Church and State, the Reformation (surely the boldest and most startling of all nationalisation schemes?), the dissolution of the monasteries, the factions of Protestant and Catholic, uniformity, tolerance and a thousand other unhappy far-off things and battles long ago.

Such is our modern mastery of the art of rubbing the gilt off every gingerbread that no longer have we time for those long, discursive and plausible preambles to sixteenth-century statutes. (Not that our cold-fish methods of applying ourselves to the strictly business-like makes much difference in the end; our Acts are quite as long and often by several degrees less comprehensible.) Space does not admit of my reproducing an example in full, but what grand, emotional stuff went into those preambles! See, for instance, the superb beginning to the Act 24 Hen. 8, c. 12: "Where by dyvers sundrie olde autentike histories and cronicles it is manifestly declared and expssed that this realme of Englond is an impire and so hath been accepted in the worlde, govned by our supme heede and King having the dignitie and roiall estate of the imperiall crowne of the same . . ." Or the preamble to the Act 25 Hen. 8, c. 21 (Ecclesiastical Licences) which is entitled "Grievances by the exactions and dispensations of the See of Rome," and contains a violent attack upon "the Bishop of Rome called the Pope." But it is best to read it for oneself, strictly out of office hours, of course.

"ESCROW."

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Non-Resident Electors

Sir,—As many local government elections will be held in the spring of next year, it would be of interest to know whether many solicitors have had occasion, when advising clients, to make use of the decision of His Honour Judge Done, in the Clerkenwell County Court on the 25th February last on an appeal by Messrs. N. D. and A. R. McWhirter against a decision of the registration officer for the Holborn constituency. Shortly, the facts were that the Messrs. McWhirter held a lease of premises in the Borough of Holborn, subsequently forming a limited company of which they were the sole directors and shareholders. The lease was not assigned to the company although the company carried on business from the premises, paid the rates and was entered in the rate book kept by the local authority as the ratepayer in respect of the premises. The Messrs. McWhirter also carried on from the premises certain other activities quite unconnected with the company. The registration officer drew the inference that the premises were occupied by the company and not by the Messrs. McWhirter as individuals and disallowed their claim for registration as non-resident electors under s. 5 (1) (*a*) of the Representation of the People Act, 1949.

This decision of the registration officer was reversed on appeal by the judge, who held as a question of part law and part fact that the Messrs. McWhirter as individuals were tenants who were occupying the premises and that the company itself was a licensee.

This case was shortly reported in the daily Press at the time and it has in some circles been considered as an authority for the proposition that the directors of a limited company, which is the tenant of land or premises of a yearly value of not less than £10, are entitled to votes as non-resident occupiers. Needless to say, the decision is no authority for any such proposition. It seems possible, however, that there may still be many directors of limited companies who hold the lease or the freehold of premises in their own names, and are in fact the occupiers, who have not claimed their right to be registered as non-resident electors.

London, E.C.1. W. E. L. SHENTON.

BOOKS RECEIVED

The New Law of Landlord and Tenant. A Guide for Agents and Others to the Act of 1954. By PETER ASH, M.A., of the Inner Temple, Barrister-at-Law. 1954. pp. (with Index) 52. London: The Incorporated Society of Auctioneers and Landed Property Agents. Price to non-members, 2s. 6d.

The Responsibility of Life Offices towards their Clients. Illustrated by reference to life assurance for partners. By C. L. JAGGERS, F.I.A., F.C.I.I. From vol. 52 (1955) of the Journal of the Chartered Insurance Institute. pp. 63. London: The Chartered Insurance Institute. 2s. net.

Elements of Insurance. Second Edition. By W. A. DINSDALE, Ph.D., B.Com., Director of Education, the Chartered Insurance Institute. 1954. pp. xv and (with Index) 184. London: Sir Isaac Pitman & Sons, Ltd. 12s. 6d. net.

Handbook of Citizen's Rights. A Guide to the Law for the Man in the Street. 1954. pp. 47. London: National Council for Civil Liberties. 2s. 6d. net.

The International Law of the Sea. Third Revised Edition. By C. JOHN COLOMBOS, Q.C., LL.D., of the Middle Temple, Associate of the Institute of International Law. 1954. pp. xvi and (with Index) 719. London: New York: Toronto: Longmans, Green & Co., Ltd. £2 10s. net.

Questions and Answers on Conflict of Laws. Second Edition. By JULIAN W. PRIEST, B.A. (Cantab.), of the Inner Temple, Barrister-at-Law. 1954. pp. v and 117. London: Sweet and Maxwell, Ltd. 6s. 6d. net.

Green's Death Duties. Third (Cumulative) Supplement to Third Edition. By H. W. HEWITT, LL.B. (Lond.), of the Estate Duty Office. 1954. pp. xii and 47. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Trial of Craig and Bentley. Notable British Trials Series, vol. 81. Edited by H. MONTGOMERY HYDE, M.P., of the Middle Temple, Barrister-at-Law. 1954. pp. xi and 264. London: Edinburgh: Glasgow: William Hodge & Co., Ltd. 15s. net.

The Queen has been pleased to appoint Mr. GEOFFREY DE P. VEALE, Q.C., to be Recorder of the City of Kingston upon Hull, with effect from 1st December, 1954.

Mr. HAROLD CHUBB, recently retired town clerk of Wood Green, London, N.22, has been presented with the Honorary Freedom of the Borough of Wood Green.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

MASTER AND SERVANT: NEGLIGENCE: FARM WORKER INJURED BY DANGEROUS BULL: NO ABSOLUTE LIABILITY

Rands *v.* McNeil

Denning, Jenkins and Morris, L.JJ.
19th November, 1954

Appeal from Donovan, J.

The defendant, a farmer, kept a bull, which was known by him and his farm workmen to be dangerous. The animal had been de-horned and was kept untethered in a loose box. Some of the workmen, but not the plaintiff, had been warned not to enter the box until the bull had been secured, which was done by putting a staff, with a hook at the end of it, through a window and attaching the hook to a ring in the animal's nose. On the day in question the "beastman," *M*, intending to "muck-out" the loose box and having failed to secure the bull by way of the window, decided to enter the box by the door and asked the plaintiff, a labourer on the farm, to assist him by holding the door open as a means of escape, should it be necessary. *M* having again failed to secure the animal by means of the staff and hook, the plaintiff offered to try and was doing so when the bull charged and severely injured him. By the present action the plaintiff claimed damages from the defendant, his employer, on the ground that the defendant was keeping an animal *ferae naturae* and of a kind presumed in law to be dangerous and, therefore, the principle of strict liability for any injury caused by the animal applied without proof of negligence. Alternatively, he claimed that the defendant was negligent in not keeping the bull tethered in the loose box. Donovan, J., dismissed the action. The plaintiff appealed.

JENKINS, L.J., said that the plaintiff's case had been almost wholly argued on the ground that it came within the well-known principle that if a man kept an animal *ferae naturae*, or a domestic animal known to be dangerous, he was responsible for injuries caused without proof of negligence, subject to the exemptions of (1) contributory negligence (now a ground for mitigation of damages only); (2) *volenti non fit injuria*; (3) trespass by the injured party; and (4) act of God. But that doctrine of absolute liability could not be applied as between a farmer and his employees in relation to their handling of a stud bull. While it was not part of the plaintiff's regular duties to look after the bull, it was within the scope of his employment to lend help when asked. The rule of absolute liability was quite inapplicable. It was not the case of a dangerous animal escaping from confinement. It could not be said that the keeping by a farmer of a bad tempered, but not utterly ferocious, bull constituted in itself negligence on his part. The case fell to be decided by reference to the ordinary law of negligence as applied between master and servant. The duty of the defendant was to take reasonable care that "mucking-out" could be carried out without risk of injury to his men. The charges of negligence made against the defendant stood or fell according to the efficiency of the method of securing the bull from outside the loose box, and according to the plaintiff's knowledge of the danger of going into the box. If it had been part of the plaintiff's duty to go into the box, which it was not, there would have been no answer to the claim. The case had not been made that the plaintiff was liable vicariously for the negligence of *M*, and it was not necessary to consider what the result of such a contention would have been. The judge below had found that the usual method was efficacious, and that the plaintiff was aware of the danger in doing what he did. On those findings, and on the case as presented, the appeal must fail.

MORRIS, L.J., agreed.

DENNING, L.J., while agreeing that the principle of absolute liability was inapplicable, considered that there had been a faulty system of work for which the defendant was responsible, although the plaintiff had been guilty of contributory negligence in entering the loose box. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *E. Ould* (*Devonshire & Co.*, for *Pearlman & Rosen*, Hull); *F. Denny* (*Dawson, Loncaster & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 905

TRANSFER OF ASSETS ABROAD: TAX LIABILITY: RIGHT TO INCOME ACQUIRED BY SETTLEMENT AND GENERAL BEQUEST

Bambridge *v.* Inland Revenue Commissioners

Evershed, M.R., Jenkins and Birkett, L.JJ.
18th November, 1954

Appeal from Harman, J. ([1954] 1 W.L.R. 1265; *ante*, p. 699).

In 1933, the taxpayer's father and mother, Mr. and Mrs. Rudyard Kipling, transferred certain assets to Kamouraska Investments, Ltd., a company incorporated in Canada. By two identical settlements, dated 12th January, 1934, each of them transferred certain shares and debentures in the company to trustees on trust to pay the income from each settlement to the settlor during his (or her) life, and on the death of the settlor to pay the whole income to the other spouse during his (or her) life, and on the death of the surviving spouse to pay the whole of the income to the taxpayer, Mrs. Elsie Bambridge, during her life. The settlements were revocable. The taxpayer's father died on 18th January, 1936, without having revoked his settlement. The mother revoked her settlement on 16th June, 1937. She died on 19th December, 1939, and by her will, dated 6th December, 1938, the taxpayer became entitled under a general bequest to a life interest in her mother's residuary estate, which included the shares and debentures in the company formerly comprised in her mother's settlement. The taxpayer was assessed to income tax and sur-tax on the footing that she had acquired the rights by virtue of which she had power to enjoy the income of the company within the provisions of s. 18 of the Finance Act, 1936, and that, accordingly, the income of the company was to be deemed to be hers for taxation purposes. On appeal from the Special Commissioners, Harman, J., dismissed the assessment in so far as it related to rights acquired under the mother's will, but affirmed that part relating to the father's settled shares. Both parties appealed.

JENKINS, L.J. (in a leading judgment), said that the taxpayer was liable to tax in respect of the securities received under her father's settlement, since her rights were acquired by means of the transfer and the settlement within the meaning of s. 18 (2), and not "by means of" the deaths of her parents leaving the settlement unrevoked. The deaths were merely incidents leading to the falling into possession of the rights. The taxpayer was also liable to tax in respect of the securities received under her mother's will. The mother's will was the means by which the taxpayer acquired her interest. It was an "associated operation" within the meaning of s. 18 (2) in relation to all the property disposed of by the will, whether by a specific or a general bequest. The death of the mother in the taxpayer's lifetime leaving the will unrevoked were not "associated operations" but were merely the fulfilment of the conditions necessary to the efficacy of the disposition. The result of *Congreve* v. *Inland Revenue Commissioners* [1948] W.N. 197; [1948] 1 All E.R. 948; 30 Tax. Cas. 163, was that liability under s. 18 attaches to every person who, for the time being, has power to enjoy the income in question, and has acquired the right giving rise to such power by means which bring him within the mischief of the section, and continues so long as there is any person who fulfils these conditions. It might, however, be difficult to show that mere inactivity resulting in intestacy came within the section as an "associated operation" and a person taking under intestacy might escape liability.

EVERSHED, M.R., delivered a concurring judgment.

BIRKETT, L.J., agreed. Appeal as to the securities under the will allowed. Cross-appeal as to the settled securities dismissed.

APPEARANCES: *John Pennycuick*, Q.C., *Sir Reginald Hills* and *J. H. Stamp* (*Solicitor of Inland Revenue*); *Roy Borneman*, Q.C., and *Roderick Watson* (*Field, Roscoe & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 1460

PRACTICE: DEFENDANT SUED UNDER TRADE NAME: LEAVE AFTER JUDGMENT TO AMEND

Pearlman (Veneers) S. A. (Pty.), Ltd. *v.* Bernhard Bartels

Denning and Hodson, L.JJ. 23rd November, 1954

Appeal from Slade, J.

The plaintiffs having obtained judgment in the courts of this country against a German concern, which described itself on its

notepaper as " Bernhard Bartels," sought to enforce that judgment in Germany, but were met by the defendant with a plea that the judgment of the British court was invalid and unenforceable because his forename was " Josef " and there was no such person as Bernhard Bartels. In anticipation of possible difficulties in the German courts the plaintiffs asked leave to amend the title of their action to " Josef Bartels trading as Bernhard Bartels." Slade, J., gave leave to amend. The defendant appealed.

DENNING, L.J., said that the defendant contended that there was no jurisdiction to amend a judgment once it had been entered, and reliance was placed on *MacCarthy* v. *Agard* [1933] 2 K.B. 417; but in that case it was sought to amend not only the name or description of the defendant but the very judgment itself, which was in a special form applicable to a married woman, and the court decided that the operative and substantive part of the judgment could only be altered on appeal. When it was sought to alter only the title of the action, it was plain that the court had ample jurisdiction to correct any misnomer or misdescription at any time.

HODSON, L.J., agreed. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *G. Gardiner*, Q.C., and *Neil Lawson* (*Buckeridge & Braune*); *M. Lyell*, Q.C. (*Sidney Pearlman*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1457

CHANCERY DIVISION

SETTLEMENT: CONTINGENT INTERESTS OF INFANT BENEFICIARIES MORTGAGED TO PROVIDE MAINTENANCE: SCHEME TO CLEAR INCUMBRANCES BY DISSOLUTION OF TRUST: PURCHASE OF LIFE TENANT'S INTEREST

***In re* Forster's Settlement**

Harman, J. 24th November, 1954

Adjourned summons.

Under a settlement made in 1919, *F* received a protected life interest in the trust funds, with remainder to his then wife (the first defendant) for life, with remainder as to capital and income to the issue of *F* by any marriage as he should by deed or will appoint; and in default of appointment to the children of *F* by any marriage who should attain twenty-one or being a female marry, and if more than one in equal shares. The marriage between *F* and the first defendant, of which there was no issue, was dissolved in 1924. In 1927 *F* remarried; of the second marriage there was issue, the second and third defendants, who were of age, and the fourth defendant who was aged nineteen at the date of the hearing of the summons. *F* died in 1941 without having exercised the power of appointment. It having become necessary to obtain funds for the maintenance of the children, the sum of £2,100 was obtained between 1942 and 1945 from one *D* under a mortgage and charges sanctioned by the court, on the terms that *D* should not call in the loans until the expiration of a year from the death of the life tenant (the first defendant), but that, nevertheless, the borrowers should have liberty to redeem at any time by the payment of the principal and all interest due at the rate of 5 per cent. In 1952 *D* died, and his executors desired that the mortgage debt and interest should be repaid. In 1953 a demand was made for some £500 in respect of estate duty accruing due on the death of *F*. It was agreed by all the beneficiaries that the trusts of the settlement should be determined, and a summons was taken out to sanction the execution of a draft deed of family arrangement whereby the first defendant was to surrender her life interest to the trustees for a sum less than its actuarial value, the defendants of full age were to be paid out, and the infant defendant's share put aside until he attained twenty-one.

HARMAN, J., said that, having regard to *Chapman* v. *Chapman* [1954] A.C. 429, the scheme could not be sanctioned under the court's general jurisdiction, unless it could be brought within the salvage principle explained in *In re New* [1901] 2 Ch. 534. There was no such situation in the present case. No doubt it was desirable to pay the estate duty and to stop the accumulation of mortgage interest, but transactions which the court had sanctioned could not be treated as improvident or improper, and their existence did not raise such an emergency as would entitle the court to interfere; and when the infant defendant came of age within two years he could consent to winding up the trust. There was accordingly no general jurisdiction to interfere. It was further submitted that the purchase of the interest of the tenant for life was an expedient transaction in the management of the trust and could be sanctioned under s. 57 of the Trustee Act, 1925. The scope of that section had been considered in *Municipal and General Securities Co., Ltd.* v. *Lloyds Bank Ltd.* [1950] Ch. 212, *In re B's Settlement* [1952] 2 All E.R. 647, and *In re Downshire Settled Estates* [1953] Ch. 218, from which it appeared that the power of the court under the section was limited to matters of administration and management, and did not extend to rewriting the trusts or altering the beneficial interests. The courts had long come to the rescue in cases where tenants for life had gravely incumbered their interests, by authorising capital money to pay off the incumbrances, as in *In re Salting* [1932] 2 Ch. 57. So, it was argued, capital money could be similarly expended in buying up the tenant for life's interest. But that came very near to altering her beneficial interest and there was the gravest doubt whether in an ordinary case s. 57 could have been applied. But in the present case the beneficial interests of the remaindermen had already been affected by orders of the court, with the result that they had been subjected to an annual wastage which it was expedient to stop. Acceptance of the offer of the tenant for life would free the rest of the fund and make it possible to pay off the charges and the estate duty, so preserving something for the remaindermen. That, in the circumstances, was a matter of management or administration, and was expedient. The trustees would, therefore, be authorised to purchase the interest of the tenant for life. Order accordingly.

APPEARANCES: *R. R. D. Phillips*; *R. Walton* (*Smith & Hudson*, for *Harold Michelmore & Co.*, Newton Abbot); *E. M. Winterbotham* (*Kingsford, Dorman & Co.*, for *Baily, Strickland and Bryant*, St. Leonards).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1450

QUEEN'S BENCH DIVISION

THEATRE: UNLICENSED ALTERATION IN PLAY BY ACTOR

Lovelace *v.* Director of Public Prosecutions

Lord Goddard, C.J., Lynskey and Ormerod, JJ.

21st October, 1954

Case stated by Liverpool stipendiary magistrate.

The Theatres Act, 1843, provides by s. 15, ". . . every person who for hire shall act or present, or cause to be acted or presented, any new stage play, or any act, scene, or part thereof until the same shall have been allowed by the Lord Chamberlain . . . shall, for every such offence, forfeit such sum as shall be awarded by the court in which or the justices by whom he shall be convicted, not exceeding the sum of £50; . . ." The manager and licensee of a theatre at which an English translation of a French play was to be performed by a company of actors directed by the principal male actor warned the latter that the police were interested in the play and twice instructed him to ensure that the licensed script was strictly adhered to. At the first performance, the actor, contrary to the manager's orders, departed from the stage directions included in the licensed script and played the final scene in a way which was objected to by the police. The manager was convicted under s. 15 as a person who " caused to be presented " part of a play before such part had been authorised by the Lord Chamberlain. He appealed.

LORD GODDARD, C.J., said that the manager contended that the conviction was wrong because the charge was " causing," and there was no evidence of any causation; the facts indeed showed that he took every possible precaution to prevent that being done which was done. A long line of cases established that, although the prohibition of doing an act was absolute, so that proof of *mens rea* was not necessary, different considerations applied where a person was charged with causing or permitting the act to be done, because a person could not cause or permit an act to be done unless he had knowledge of the facts. In the present case, the express mandate given by the defendant was to present the play as licensed by the Lord Chamberlain and not otherwise, and it was wrong to hold that the defendant had caused the actor to present the unauthorised ending. The court was not deciding what the position would have been if the defendant had been charged with presenting the play; but on the charge as laid, the appeal should be allowed.

LYNSKEY and ORMEROD, JJ., agreed. Appeal allowed.

APPEARANCES: *J. Robertson Crichton*, Q.C., and *J. M. Kennan* (*Arthur Taylor & Co.*, for *Mace & Jones*, Liverpool); *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1468

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: JUSTICES: DESERTION: DISMISSAL OF PREVIOUS CHARGE OF CRUELTY ON SIMILAR FACT

Cooper *v.* Cooper (No. 2)

Lord Merriman, P., and Karminski, J. 15th October, 1954

Appeals by wife from two decisions of the Edmonton justices, who dismissed, on 23rd April, 1954, a summons alleging persistent cruelty, and on 28th May, 1954, a further summons issued on 11th May, 1954, alleging desertion and wilful neglect to provide reasonable maintenance.

The appellant wife complained in a court of summary jurisdiction that her husband had been guilty of persistent cruelty, and, in addition to giving evidence of alleged assault, she said that her husband had frequently told her to " pack her bags and clear out." She produced two notes written by her husband, in one of which he told her to " get out," and in the other to " clear out." The charge of persistent cruelty was dismissed, and the wife shortly afterwards made a complaint of desertion and wilful neglect to maintain. Her solicitors, in answer to a request for information as to grounds on which she relied, said that she did not wholly rely upon the evidence given at the previous hearing. Apart from the notes " clear out " and " get out," the husband had (it was alleged) driven her from home by expulsive words and conduct. Objection was taken at the beginning of the hearing that the wife was attempting to re-open the previous trial, under the guise of alleging desertion instead of cruelty. The objection was upheld and the summons dismissed without evidence other than the production of the two notes having been called.

LORD MERRIMAN, P., gave leave to hear the appeal against the dismissal of the charge of persistent cruelty out of time, so that the whole of the circumstances might be considered, and said that it was clear that that summons had been dismissed on the merits because the justices thought it " rubbish." His lordship said that the second summons had, however, been dismissed too soon; the decision to hear no further evidence or to admit evidence tendered and any other evidence relating to expulsive words as the cause of the wife leaving home had been wrong because it was premature. The case was covered by *Foster* v. *Foster* [1954] P. 67, where a similar point had arisen in a more complicated form. If observations by Willmer, J., in *Bright* v. *Bright* [1954] P. 270, 291, were intended to lay down that because, in the course of a charge of cruelty, matters emerged or were even particularised which suggested that a husband wished his wife to leave, or told her to leave, the dismissal of the cruelty charge operated as an estoppel from using that class of evidence in support of a charge of constructive desertion, he (his lordship) respectfully disagreed with those observations, which were in conflict with *Foster* v. *Foster*, *supra*.

KARMINSKI, J., concurred. Appeal (as to desertion) allowed; case remitted for rehearing. Appeal (as to cruelty) dismissed.

APPEARANCES: *R. Vick* (*R. Crane*); *G. Shindler* (*Craigen Hicks & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[3 W.L.R. 923**

HUSBAND AND WIFE: JUSTICES: PRACTICE: PARTY IN PERSON: DUTY OF COURT

Fox *v.* Fox

Lord Merriman, P., and Karminski, J. 3rd November, 1954

Appeal by husband from decision of the Chelsea Domestic Proceedings Court, dated 2nd September, 1954.

The parties had been reconciled in April, 1954, after a separation of some months which had begun by the husband leaving the matrimonial home, which was at the house of the wife's parents. On 17th July, 1954, the husband again left the home, taking with him some two-thirds of the furniture which was being bought by the parties on hire-purchase, including the bed. The wife made a complaint that the husband had deserted her, and an order was made in her favour. At the hearing before the justices the wife was represented by a solicitor; the husband appeared in person. The husband's case seemed from his evidence to be that the reconciliation in April, 1954, had taken place on the basis that he was to find a home which was with neither of the parties' families: that although, admittedly, he had not previously consulted his wife about the particular flat which he had in fact taken, he had asked his wife to go there with him, and that she had refused. He stated in court that he had told his wife that she could come; that there was a flat for her, and that he wanted her back. This case was not, however, put to the wife either before or after the husband had given evidence.

LORD MERRIMAN, P., referred to the nature of the appeal and said that the wife had been represented by a solicitor, but the husband had not been represented at all. His lordship referred to s. 61 of the Magistrates' Courts Act, 1952, whereby: " Where in any domestic proceedings . . . it appears to a magistrates' court that any party to the proceedings who is not legally represented is unable effectively to examine or cross-examine a witness, the court shall ascertain from that party what are the matters about which the witness may be able to depose or on which the witness ought to be cross-examined, as the case may be, and shall put, or cause to be put, to the witness such questions in the interests of that party as may appear to the court to be proper." After referring to the nature of the evidence which had been given, his lordship said that directly the husband had developed his case it was the bounden duty of the court (through the chairman) to put that case to the wife and see what her answers to it were, and then to adjudge the case on all the information before them. In other words, the case had not been tried, and it was inevitable that the order must be set aside.

KARMINSKI, J., agreed. Appeal allowed. Rehearing ordered.

APPEARANCES: *L. I. Halpern* (*Harry Rose*); *D. R. Ellison* (*Samuel Coleman*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 1472**

HUSBAND AND WIFE: JUSTICES: PRACTICE: DEFENCE OF BELIEF IN ADULTERY: NOTICE OF CHARGES

Jones *v.* Jones

Lord Merriman, P., and Karminski, J.
28th October, 1954

Appeal by a wife against the dismissal by the Mold justices of her summons on the ground of wilful neglect to maintain.

The wife had left the matrimonial home, leaving a note from which it appeared that there had been a quarrel the previous night, and in which she said: " You told me to clear out. I know Harold [one Dyment] wants a housekeeper, and that is where I am going." She went to the man's house that day. The justices dismissed the summons, *inter alia*, on the ground that they accepted the husband's evidence that the wife's conduct had induced a *bona fide* reasonable belief in her adultery. No notice had previously been furnished of the nature of the defence, and the matter is reported solely upon that point.

LORD MERRIMAN, P., in the course of his judgment, referred to *Broadbent* v. *Broadbent* (1927), 43 T.L.R. 186, and said that it had been laid down that it was necessary that, in any substantive charge of adultery brought against a wife under the married women's code, proper and particular notice should be given to her of the substance of the charge. That procedure was not restricted merely to cases where the husband was making a substantive complaint of adultery, for in *Duffield* v. *Duffield* [1949] W.N. 159 the same principle had been expressly extended to cases in which the husband was relying on adultery as an answer to the charge, or as vitiating or removing the jurisdiction of the justices to try the matter. In *Frampton* v. *Frampton* [1951] W.N. 250 this court extended the same principle to cases where the husband put forward a reasonable belief that adultery had been committed. The present case was a clear illustration of the propriety of that ruling.

KARMINSKI, J., concurred. Appeal allowed. Case remitted for rehearing.

APPEARANCES: *H. E. Hooson* (*Lovell, Son & Pitfield*, for *Walker, Smith & Way*, Chester); *R. G. Waterhouse* (*Jaques & Co.*, for *Cyril Jones, Son & Williams*, Wrexham).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 1474**

Mr. WILLIAM CLEVELAND-STEVENS, Q.C., has been elected treasurer of Lincoln's Inn for 1955. Mr. G. P. COLDSTREAM has been elected a Bencher of the Society.

Mr. STEPHEN MORTON GORE, deputy town clerk and deputy clerk of the peace for Wolverhampton since 1946, has been appointed secretary to the London Electricity Board.

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Oil in Navigable Waters Bill [H.L.] [2nd December.

To enable effect to be given to the International Convention for the Prevention of Pollution of the Sea, 1954, and otherwise to make new provision for preventing the pollution of navigable waters by oil.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time :—

Dunoon Burgh (Pavilion Expenditure) Order Confirmation Bill [H.C.] [2nd December.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Dunoon Burgh (Pavilion Expenditure).

National Insurance Bill [H.C.] [1st December.

To increase contributions and benefit under the National Insurance (Industrial Injuries) Acts, 1946 to 1953, and the National Insurance Acts, 1946 to 1953, and for purposes connected with the matters aforesaid.

National Service Bill [H.C.] [1st December.

To provide for extending the upper age-limit for liability to national service in the case of persons absent from Great Britain in the last year of their said liability, and for purposes connected with the matter aforesaid.

New Towns Bill [H.C.] [1st December.

To increase the amount of the advances which may be made to development corporations under section twelve of the New Towns Act, 1946.

Wireless Telegraphy (Validation of Charges) Bill [H.C.] [1st December.

To validate certain charges in respect of licences under the Wireless Telegraphy Acts, 1904 to 1926, and for purposes connected with the matter aforesaid.

STATUTORY INSTRUMENTS

Agriculture (Spring Traps) (Scotland) Order, 1954. (S.I. 1954 No. 1587 (S. 176).)

Basutoland, Bechuanaland Protectorate and Swaziland Order in Council, 1954. (S.I. 1954 No. 1566.)

British Transport Commission (Organisation) Scheme Order, 1954. (S.I. 1954 No. 1579.) 6d.

Defence Regulations (No. 10) Order, 1954. (S.I. 1954 No. 1558.)

By these regulations the following Defence (General) Regulations are revoked as from 7th December, 1954, namely, regs. 47C, 53, 55F, 68CB, 70 and 88A.

Emergency Laws (Continuance) Order, 1954. (S.I. 1954 No. 1560.)

By this order the following enactments and regulations, which were due to expire on 10th December, 1954, are continued for a further year, namely: Emergency Laws (Transitional Provisions) Act, 1946, ss. 3 (1) and 6; Defence (General) Regulations 52, 82–85, 91–93, 97–102, 105; Defence (Agriculture and Fisheries) Regulations, 1939, Pts. I, II, III and IX and Scheds. I and II; Defence (Armed Forces) Regulations, 1939, regs. 1 and 6; Defence (Patents, Trade Marks, etc.) Regulations, 1941, regs. 1 and 3 (5); Defence (Sale of Food) Regulations, 1943.

Emergency Laws (Miscellaneous Provisions) (Colonies, etc.) Order in Council, 1954. (S.I. 1954 No. 1561.)

Gold Coast (Validation of Judges' Appointments) Order in Council, 1954. (S.I. 1954 No. 1567.)

Import Duties (Drawback) (No. 9) Order, 1954. (S.I. 1954 No. 1570.)

Income Tax (Employments) (No. 5) Regulations, 1954. (S.I. 1954 No. 1577.) 5d.

Draft **National Assistance** (Determination of Need) Amendment Regulations, 1954.

Nyasaland Protectorate (Coinage and Currency) (Revocation) Order in Council, 1954. (S.I. 1954 No. 1569.)

Patents (Extension of Period of Emergency) Order, 1954. (S.I. 1954 No. 1563.)

Registered Designs (Extension of Period of Emergency) Order, 1954. (S.I. 1954 No. 1562.)

Retention of Cables, Mains and Pipes under Highways (Anglesey) (No. 1) Order, 1954. (S.I. 1954 No. 1580.)

Retention of Main under Highway (Pembrokeshire) (No. 2) Order, 1954. (S.I. 1954 No. 1581.)

Rules of the Supreme Court (Landlord and Tenant), 1954. (S.I. 1954 No. 1585 (L. 17).) 6d.

These rules, which came into force on 6th December, 1954, substitute a new Ord. 53D for the existing order, and prescribe the procedure on applications to the High Court under the Landlord and Tenant Acts, 1927 and 1954. Order 47 is amended to restrict the issue of a writ of possession in certain cases where Pt. I of the 1954 Act applies and application for relief has been made under s. 16.

Draft **St. James's and the Green Parks** Regulations, 1955. 5d.

Savings Bank Annuities (Tables) Order, 1954. (S.I. 1954 No. 1578.) 8d.

Slaughter of Animal (Prevention of Cruelty) (No. 2) Regulations, 1954. (S.I. 1954 No. 1584.) 6d.

Stopping up of Highways (Bedfordshire) (No. 3) Order, 1954. (S.I. 1954 No. 1571.)

Stopping up of Highways (London) (No. 46) Order. 1954. (S.I. 1954 No. 1554.)

Stopping up of Highways (Surrey) (No. 4) Order, 1954. (S.I. 1954 No. 1572.)

Supplies and Services (Continuance) Order, 1954. (S.I. 1954 No. 1559.)

This order continues for another year the Supplies and Services (Transitional Powers) Act, 1945, which would otherwise have expired on 10th December, 1954. This has the effect of preserving Defence Regulations having continued effect by virtue of the Act of 1945.

Uganda (Amendment) Order in Council, 1954. (S.I. 1954 No. 1568.)

University of St. Andrews Act, 1953 (Commencement) (No. 4) Order, 1954. (S.I. 1954 No. 1564 (C. 16).)

Valuation Roll (Scotland) Regulations, 1954. (S.I. 1954 No. 1575 (S. 175).)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

SOCIETIES

At the annual dinner of the LEEDS LAW STUDENTS' SOCIETY held on 3rd December, Mr. Justice Hallett, the president, presided. The guests included Mr. Justice Havers; Mr. Justice Wallington; Mr. Justice Pearson; Mr. Maxwell Ramsden; Mr. T. L. Chalton, president of the Leeds Incorporated Law Society; Dr. A. S. R. Sinton, Leeds police surgeon; Mr. H. R. B. Shepherd, Q.C.; Sir George W. Martin, High Sheriff of Yorkshire; Mr. A. I. Bottomley, hon. secretary of Bradford Law Students' Society; Mr. R. Cleworth, Q.C., vice-president of Bradford Law Students' Society; Mr. R. Crute, town clerk of Leeds; Councillor Albert Smith, deputy Lord Mayor of Leeds; His Honour Judge D. O. McKee; Mr. J. Barnett, chief constable of Leeds; Mr. J. M. Snowie, hon. secretary of the Insurance Institute of Leeds; and Mr. J. V. Bates, hon. secretary of Wakefield Law Students' Society.

On the occasion of the tercentenary of John Selden's death, the council of the SELDEN SOCIETY invited the Master of the Temple, the Reverend Canon J. d'E. Firth, to attend at the laying of a wreath on Selden's tombstone in the Temple Church on Tuesday, 30th November. At the ceremony were the president of the Society (Mr. Justice Vaisey), members of the council and other members of the Society.

The Motion in the Joint Debate between the UNION SOCIETY OF LONDON and the OXFORD UNION SOCIETY to be held on 15th December in the Common Room, Gray's Inn, at 8 p.m., will be "That the growing influence of the U.S.A. is a threat to the British way of life."

POINTS IN PRACTICE

Liability of Boarding-house Keeper for Food Poisoning

Q. We act for the proprietor of a boarding-house establishment, and some visitors who were staying with her recently were taken ill with food poisoning, as a result of which they have refused to pay for the accommodation. It is not at all clear whether the poisoning was as a result of something eaten or drunk at our client's establishment. If it were to be so established, what would be the nature of our client's liability? Would it be absolute or would it be a defence for her to prove that she was not negligent in supplying the food or drink which caused the food poisoning? Although there must surely be cases on this point, we have been unable to find any.

A. We do not think there is any absolute liability in civil proceedings in these circumstances, notwithstanding that there may have been a breach of the Food and Drugs Acts (cf. *Square* v. *Model Farm Dairies, Ltd.* [1939] 2 K.B. 365). The case would depend on the establishment of negligence by the boarding-house keeper; or perhaps on evidence showing a breach of the warranty implied by the Sale of Goods Act. At least the impression gained from the last sentence of para. 206 in vol. 18 of Halsbury is that a boarding-house or innkeeper is a seller of the food which he provides for his guests. We have not found a case which categorically establishes this. *Bret* v. *Holborn Restaurant* (1887), 3 T.L.R. 309 (a misfire on fact); *Frost* v. *Aylesbury Dairy* [1905] 1 K.B. 608; *Chaproniere* v. *Mason* (1905), 21 T.L.R. 633; *R.* v. *Treeve* (1796), 2 East P.C. 821, and *Heil* v. *Hedges* [1951] 1 T.L.R. 512, will be found of interest. Boarding-house keepers are usually greatly concerned with their reputation and we should have thought that, if it were proved that the food poisoning was contracted at the premises, even in the absence of negligence, the proprietor might prefer to waive the charge for accommodation.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Gift of Scientific Models to Corporation for Exhibition

Q. *W* is a widow who has inherited from her husband certain scientific models which upon the husband's death were exempted from the payment of death duties. *W* wishes to give these articles by way of gift to the mayor, aldermen and burgesses of the county borough council, and she wishes to secure in consideration of the gift that the mayor, aldermen and burgesses will indemnify her against any death duties which may at any time become payable in respect of these models, which are valuable, and she wishes to secure that the collection of models shall be kept together and shall be publicly displayed in perpetuity with an acknowledgment that they are the work of her late husband, to whose skill and ability they are to form a permanent memorial. The town clerk of the county borough in question has suggested that it is sufficient that a receipt scheduling the gifts, stating that they have been placed in the custody of the mayor, aldermen and burgesses, and an undertaking should be given by the town clerk on behalf of the mayor, aldermen and burgesses to display them to meet with *W's* wishes. Would you please indicate how you consider this matter could best be effected and whether a deed of trust is desirable. *W* is prepared to make what is a valuable gift to the local authority in question, but she wishes to secure as far as the law will permit that the conditions which she lays down shall be observed and enforced for the future. Would this best be done by a deed with an alternative gift in favour of another authority if the conditions were not carried out?

A. Difficulties are always encountered when it is desired to impose conditions in perpetuity, but we think that in this case it will be possible to meet the widow's wishes as you suggest by a deed of trust limiting the chattels to the corporation so long as they shall exhibit them in the manner desired and thereafter to some other alternative charitable institution upon similar trusts. It appears that *Re Spence* [1938] Ch. 96 is a direct authority that a gift of such a collection of chattels to a corporation upon similar terms is a charitable gift. That being so, no difficulty will be encountered from the rule against perpetuities. We regret that we have been unable to find any precedent which will be of any assistance to you, but the operative part of any such trust would as we suggest be a limitation to the corporation during such time as they display the chattels in a manner specified and thereafter to some other body upon similar trusts. It will of course be necessary to appoint trustees, and no doubt it would be convenient to appoint the corporation itself, although one must recognise that without imputing misconduct to anyone this may result in the precise terms of the trust being to some extent overlooked in the more or less remote future.

NOTES AND NEWS

Honours and Appointments

Mr. F. G. S. FREER, principal committee clerk with Holborn Borough Council, has been appointed assistant solicitor to Islington Borough Council, in succession to Mr. E. D. L. Davies, who has resigned.

Sir MAXWELL RAMSDEN, solicitor, of Huddersfield, has been appointed to the Board of the Bradford Equitable Building Society.

Mr. DOUGLAS WILLIAM YATES, solicitor, of Hyde, Glossop and Ashton-under-Lyne, has been appointed part-time town clerk of Dukinfield, in succession to the late Mr. Ernest Barlow.

The following appointments are announced in the Colonial Legal Service:

Mr. I. SMART, Assistant Crown Solicitor, Trinidad, to be Deputy Crown Solicitor, Trinidad; Mr. E. L. ANDERSON to be Magistrate, Nigeria; Mr. P. R. BRIDGES to be Lands Officer and Legal Assistant, Gambia; Mr. G. O. L. DYKE, D.F.C., to be Resident Magistrate, Uganda; and Mr. A. R. W. PORTER to be Resident Magistrate, Northern Rhodesia.

Miscellaneous

SUPREME COURT

CHRISTMAS VACATION, 1954

Notice is hereby given that an Order has been made under r. 6 of Ord. LXIII closing the offices of the Supreme Court from 12.30 p.m. on Friday, the 24th December, until Tuesday, the 28th December, 1954, inclusive. The Personal Application Department of the Principal Probate Registry and the District Probate Registries will remain open on Friday, the 24th December, and on Tuesday, the 28th December.

The order does not apply to the District Registries of the High Court, each of which will be closed on the same days as the local county court office.

THE SOLICITORS ACTS, 1932 TO 1941

On 12th November, 1954, the practising certificate of EDUARD CARL HEINRICH CRUESEMANN, of 20 Westwood Park, London, S.E.23, and Ridgway House, 41–42 King William Street, London, E.C.4, a Solicitor of the Supreme Court, was suspended by virtue of the fact that he was adjudicated bankrupt on 12th November, 1954.

On 18th November, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon HARRY MOSS MYERS, of No. 16 Bolton Street, Mayfair, London, W.1, a penalty of five hundred pounds (£500), to be forfeit to Her Majesty, and that he jointly and severally with another do pay to the complainant his costs of and incidental to the application and enquiry.

On 18th November, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of JAMES RANDLE EVANS, of Queen's Chambers,

No. 8 North Street, Wolverhampton, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 18th November, 1954, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon IVOR MYERS, of No. 16 Bolton Street, Mayfair, London, W.1, a penalty of two hundred and fifty pounds (£250), to be forfeit to Her Majesty, and that he jointly and severally with another do pay to the complainant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLAN

OXFORDSHIRE DEVELOPMENT PLAN

Proposals for alterations and additions to the above development plan were on 30th November, 1954, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the Henley Rural District. Certified true copies of the proposals as submitted have been deposited for public inspection at the offices of the Clerk of the Council in the County Hall, Oxford, and at the offices of the Clerk of the Henley Rural District Council, Easby House, Northfield End, Henley-on-Thames. The copies of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9.30 a.m. and 5 p.m. on every weekday except Saturday when they may be inspected between the hours of 9.30 a.m. and 12 noon. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 25th January, 1955, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Oxfordshire County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

In the autumn of last year the *Accountant* announced that it proposed to make one or more awards annually to companies whose shares are quoted on a recognised stock exchange in the United Kingdom in relation to the form and contents of their reports and accounts. The award in respect of the first year was presented last June by the then Lord Mayor of London, Sir Noel Bowater, Bt., M.C. The *Accountant* now announces that it has been decided to make two awards in 1955. The 1955 awards will be made in respect of reports and accounts laid before companies in general meeting within the year ending 31st December, 1954. Particular importance is attached to the adequacy of the information given and its presentation. Companies are requested to send, for consideration, copies of their reports and accounts (with any chairman's statement circulated therewith) to: The Secretary, the *Accountant* Annual Award, 4 Drapers' Gardens, London, E.C.2. The closing date for the receipt of entries for the 1955 awards is 31st January, 1955.

Wills and Bequests

Mr. C. E. Hulton, solicitor, of Bolton, left £101,478.

Mr. J. G. Chambers, solicitor, of Sheffield, left £2,129 (£1,229 net).

OBITUARY

MR. S. U. BLACKBURN

Mr. Samuel Upton Blackburn, retired solicitor, of Sheffield, died on 26th November. He was president of the Sheffield District Law Society in 1951 and chairman of the Sheffield Poor Persons Legal Aid Committee from 1947 to 1952. He was admitted in 1907.

MR. J. W. HATTERSLEY

Mr. John William Hattersley, formerly a solicitor of Mexborough, Yorks, died on 27th November, aged 91.

CASES REPORTED IN VOL. 98

16th October to 11th December, 1954

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